

ORIGINAL

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2009 NOV -4 PM 1:26
JENNIFER HICKS, CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

BY: B. Hamilton

THE STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.)
)
STEVEN CARROLL DEMOCKER,)
)
Defendant.)
_____)

No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
FRIDAY, OCTOBER 30, 2009
9:19 A.M.

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING

DIRECT EXAMINATION AND PARTIAL CROSS OF RICHARD ECHOLS

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

OCTOBER 30, 2009
9:19 A.M.

EVIDENTIARY HEARING

APPEARANCES:

FOR THE STATE, MR. JOE BUTNER.
FOR THE DEFENDANT, MR. JOHN SEARS AND MR. LARRY
HAMMOND.

(THE FOLLOWING IS A PARTIAL TRANSCRIPT OF THE
PROCEEDINGS HELD ON OCTOBER 30, 2009:)

(Whereupon, a discussion was held in chambers
that was reported but is not contained herein.)

(Whereupon, the following was held in open court.)

THE COURT: The record reflects the presence
of the defendant, both his counsel, the prosecutor,
Mr. Butner.

Mr. Butner, your next witness.

MR. BUTNER: Call Mr. Richard Echols to the
stand, Judge.

THE CLERK: Do you solemnly swear upon the
penalty of perjury the testimony you are about to give will
be the truth, the whole truth, and nothing but the truth, so
help you God?

THE WITNESS: Yes, I do.

MR. BUTNER: May I, Judge?

THE COURT: You may proceed.

MR. BUTNER: Thank you, sir.

1 RICHARD LEE ECHOLS,
2 called as a witness, having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. BUTNER:

6 Q. Please state your name for the record.

7 A. Richard Lee Echols.

8 Q. And what is your occupation, Mr. Echols?

9 A. I'm a fraud examiner for the Rocky Mountain
10 Information Network.

11 Q. And how long have you been fraud examiner for the
12 Rocky Mountain Information Network?

13 A. Just over two years.

14 Q. Would you tell us your educational background to
15 prepare yourself for your occupation as a fraud examiner
16 with -- is it okay if I use the acronym "RMIN"?

17 A. Yes.

18 Q. Please tell us your educational background.

19 A. I graduated from Arizona State University with a
20 bachelor's degree in accounting. I sat for and passed the
21 CPA exam in the same year that I graduated.

22 Q. When was that?

23 A. In 1974.

24 Q. So you have been a licensed CPA within the State
25 of Arizona since 1974?

1 A. Until I moved to Missouri, and then I swapped my
2 license to Missouri.

3 Q. Okay. And what other educational background?

4 A. At that time I was working for a CPA firm. I
5 continued to work for that firm from when I received my
6 degree and my CPA certificate as a CPA until 1995, when I
7 sold my practice and I went to the Arizona Regional Police
8 Academy, where I graduated as a sworn peace officer and began
9 working for the City of Phoenix Police Department. I worked
10 for them for approximately three years, when I transferred
11 to -- moved to Missouri.

12 In Missouri I continued a small
13 accounting practice, and I went to work with the Texas County
14 Sheriff's Office, doing work for them. Did some criminal
15 fraud examinations for them.

16 In 19 -- excuse me -- in 2006, I returned
17 from Missouri here to Arizona and subsequently obtained the
18 job with RMIN. When I began with RMIN, they requested that I
19 receive my accreditation as a certified fraud examiner. So I
20 contacted the association, asked them if I could take the
21 exam. They sent the exam to me. Passed the exam. Received
22 my certification the first month I was with RMIN.

23 Subsequently just after that, I applied
24 for and received my Certified in Financial Forensics
25 Certification from the American Institute of Certified Public

1 Accountants -- both of those -- one in -- the CFE in 2008,
2 and the CFF in 2009.

3 Q. And what -- would you tell us basically what
4 "RMIN" is?

5 A. RMIN is an agency established by the U.S.
6 Department of Justice. We are granted the assignment of
7 providing law enforcement ancillary services to all of the
8 law enforcement agencies in the eight Rocky Mountain states.
9 There are six such units in the United States, broken up
10 geographically. Ours covers the eight Rocky Mountain states.

11 My responsibility is to -- when any law
12 enforcement agency in the eight Rocky Mountain states does
13 not have qualified personnel to conduct a fraud examination,
14 then I am loaned to them to perform that examination.

15 Q. So basically, how long have you been involved in
16 the investigation and examination of situations for the
17 presence of fraud?

18 A. Since my career started back in 1972 as a CPA. We
19 frequently did that type of work.

20 Q. And when did you become involved with this
21 particular case?

22 A. It's been about a year.

23 Q. And would you tell us basically what you have done
24 to prepare yourself for offering your opinions to the Court
25 today?

1 A. I was asked by the Yavapai County Sheriff's Office
2 to review documents that they had, asking if I would review
3 them to be able to answer questions about the financial
4 circumstances surrounding the community estate of Steven and
5 Carol Democker. So all of the information that they gave me
6 concerning that community estate, I have reviewed and am
7 available to answer questions based on what we have observed.

8 We are continuing to receive some of that
9 information, so our evaluation is not complete, but we have
10 reviewed almost all that has been given to us.

11 Q. You have, in essence, completed a preliminary
12 evaluation, so to speak?

13 A. That's correct.

14 Q. I am going to show you some documents for your
15 review and ask you a few questions about them. Okay?

16 A. Yes.

17 MR. BUTNER: May I approach, Judge?

18 THE COURT: Yes.

19 MR. BUTNER: And can I go back and forth, as I
20 did before?

21 THE COURT: Yes.

22 MR. BUTNER: Thank you, Your Honor.

23 Q. Let me show you what's been marked as
24 Exhibit No. 120. Let me show you these exhibit numbers so
25 you know where to look. They are real small. If you've got

1 your glasses, you might need them.

2 So this is Exhibit 120. Do you recognize
3 that document, sir?

4 A. Yes, I do.

5 Q. What is it?

6 A. It is the 2007, 1040 income tax return that was
7 filed by Mr. Steven Democker, prepared by Mr. Doug Raider.

8 Q. And did you use that particular document in the
9 preparation of your opinions?

10 A. Yes, I did.

11 MR. BUTNER: I'd move for the admission of
12 Exhibit No. 120.

13 MR. SEARS: May I take a look at it, please,
14 Your Honor?

15 THE COURT: Yes.

16 MR. SEARS: May I have a couple of questions
17 on voir dire of this witness, Your Honor?

18 THE COURT: You may.

19 VOIR DIRE EXAMINATION

20 BY MR. SEARS:

21 Q. Do you know where this document was obtained,
22 Mr. Echols?

23 A. I believe there's -- I believe we have two copies
24 of that document. I believe one was obtained from
25 Anna Young's records, and I believe the other copy was

1 obtained from Cynthia Wallace's records.

2 Q. The document there marked for identification does
3 not appear to be a copy of a document signed by Mr. Democker;
4 does it?

5 A. There is no signature on this document, no.

6 Q. Okay. Can you testify under oath that the
7 original of those documents were filed with the Internal
8 Revenue Service in the Arizona Department of Revenue?

9 A. No, I cannot.

10 MR. SEARS: Foundation.

11 THE COURT: Mr. Butner?

12 MR. BUTNER: Judge, I will ask him some more
13 questions just to lay a little more foundation.

14 THE COURT: I will sustain the objection for
15 the time being.

16 DIRECT EXAMINATION RESUMED

17 BY MR. BUTNER:

18 Q. Regarding Exhibit No. 120, did you find that in
19 your review of documents attached to any other documents?

20 A. This document that we received from Wallace's
21 records, there were several other documents that were with
22 it, yes.

23 Q. And what documents were with it?

24 A. Can I refer to --

25 Q. Your notes or whatever?

1 A. Yeah.

2 Q. Yes, sir.

3 A. (Whereupon, the witness reviews a document.)

4 I believe in the same packet that we
5 received from Mrs. Wallace, we received a letter explaining
6 the documents that she was sending to us, indicating that
7 they had received a copy of the 2007 tax return and the
8 schedule of the 2007 support payments that were used in the
9 preparation of that exam -- excuse me, of that return, for
10 Mrs. Wallace to be able to use it in the preparation of
11 Carol's return, because she had to have those figures.

12 Q. Okay. And did you also have an interview with
13 Mr. Democker's accountant, Mr. Raider?

14 A. Yes, sir, I did.

15 Q. And did Mr. Raider discuss Mr. Democker's 2007 tax
16 return with you?

17 A. Yes, sir, he did.

18 Q. Did he indicate that he prepared it?

19 A. Yes, sir, he did.

20 Q. Did you look at a copy of it with Mr. Raider?

21 A. We provided a copy of the return when we
22 interviewed Mr. Raider and asked him if that's the return he
23 prepared, and he said yes.

24 Q. And is this a copy of that return that you showed
25 to Mr. Raider?

1 A. Yes, sir.

2 MR. BUTNER: I'd move for the admission of
3 Exhibit No. 120, Judge.

4 THE COURT: Mr. Sears?

5 MR. SEARS: Same objection, Your Honor. There
6 is no indication yet that Mr. Raider then filed that return
7 on behalf of Mr. Democker, and it is not signed by
8 Mr. Democker.

9 And I think if they want to offer it for
10 the proposition that they've advanced so far, that he somehow
11 was defrauding the Internal Revenue Service at the Arizona
12 Department of Revenue, they are obligated to provide what was
13 actually filed, not an unsigned copy.

14 THE COURT: State?

15 BY MR. BUTNER:

16 Q. Mr. Echols, did Mr. Raider tell you he filed that
17 tax return on behalf of Mr. Democker?

18 A. I believe Mr. Raider told us that he prepared the
19 return.

20 Q. So he didn't say he filed it?

21 A. I don't recall him saying that he filed the
22 return. However, I think we know the return was filed,
23 because the refund on this return was received and deposited
24 in Mr. Democker's bank statements for the exact amount that's
25 on the refund of this return.

1 Q. Did Mr. Democker submit a copy of that income tax
2 return in his documents to the Court in his divorce?

3 A. I believe he did. Let me check my record.

4 I stand corrected. He submitted the
5 2004, '5, and '6 tax returns. I am not aware of the 2007.

6 Q. Okay. We will come back to that, I think, at this
7 point.

8 Let me show you what has been marked as
9 Exhibit No. 122.

10 Do you recognize that particular
11 document?

12 A. Yes, sir, I do.

13 Q. What is it?

14 A. That is the Respondent's Affidavit of Financial
15 Information that was submitted on the 8th of May of 2007.

16 Q. And it was submitted to whom?

17 A. The Court.

18 Q. The Yavapai County Superior Court in connection
19 with Mr. Democker's divorce from Carol Kennedy?

20 A. Yes, sir.

21 MR. BUTNER: I would move for the admission of
22 Exhibit 122.

23 MR. SEARS: May I have a moment, Your Honor?
24 It would be simpler, with the Court's permission, if I take a
25 look at what Mr. Echols has.

1 THE COURT: You may.

2 MR. SEARS: Thank you.

3 Thank you, Your Honor. Relevance. These
4 parties were represented by competent counsel, a Divorce of
5 Final Decree was entered, no appeal was taken, no motion for
6 new trial was filed, principles of res judicata finality
7 apply, it is irrelevant for purposes of this hearing what did
8 or didn't take place in the divorce between these parties.

9 THE COURT: Overruled. 122 is admitted.

10 BY MR. BUTNER:

11 Q. Let me show you what has been marked as
12 Exhibit No. 121.

13 Do you recognize that particular
14 document?

15 A. Yes, sir, I do.

16 Q. What is it?

17 A. That is the Respondent's Amended Affidavit of
18 Financial Information that was presented to the Yavapai Court
19 in conjunction with the divorce proceedings between
20 Mr. Democker and Carol.

21 THE COURT: What is the date?

22 THE WITNESS: It's the 31st of January of
23 2008.

24 THE COURT: Thank you.

25 MR. BUTNER: All right.

1 Q. And that was filed with the Court in connection
2 with Mr. Democker's divorce from Carol Kennedy?

3 A. Yes, sir.

4 MR. BUTNER: I would move for the admission of
5 Exhibit No. 121.

6 MR. SEARS: Objection, Your Honor. Foundation
7 from this witness. We've heard absolutely nothing about what
8 any of these documents have to do with any of the issues
9 before the Court in this Chronis hearing, and it is
10 irrelevant for the reason stated in my previous objection.
11 What happened in the divorce is a matter of law resolved.

12 THE COURT: Overruled. 121 is admitted.

13 BY MR. BUTNER:

14 Q. Let me show you what's been marked as Exhibit 125.
15 Do you recognize that document, sir?

16 A. Yes, sir, I do.

17 Q. And what is it?

18 A. It is a schedule of the 2007 support payments to
19 Carol under temporary orders. It is a document that was
20 prepared by Mr. Democker in preparation of his 2007 tax
21 return, for which he gave a copy to Carol.

22 I believe I have three duplicate copies
23 of this: One that was received off the computer of
24 Mr. Democker; one from the records of Carol; and one from the
25 records of -- four copies -- one from the records of

1 Anna Young.

2 Q. Anna Young, Mr. Democker's divorce attorney?

3 A. That's correct. And all of those copies are
4 identical, and they were the back-up for the calculation of
5 alimony that was on the 2007 tax return.

6 MR. BUTNER: I would move for the admission of
7 Exhibit No. 125.

8 MR. SEARS: May I have a few questions on voir
9 dire, Your Honor?

10 THE COURT: You may.

11 VOIR DIRE EXAMINATION

12 BY MR. SEARS:

13 Q. Mr. Echols, there is some handwriting on the
14 photocopy you have in front of you; is that right?

15 A. Yes, sir.

16 Q. Do you know by whom that handwriting was made and
17 when it was placed on that document?

18 A. No, sir.

19 Q. Do all of the copies that you referred to have the
20 same handwritten notations on them?

21 A. Let me check that.

22 No, sir. They don't all have that
23 handwriting. The original receipt we received off of
24 Mr. Democker's computer does not have that handwriting at the
25 top.

1 Q. Can you tell us where the document that you have
2 in front of you with Carol's handwriting or someone's
3 handwriting, where it came from?

4 A. Yes. One came from Mrs. Wallace's files, and one
5 came from Carol's records.

6 Q. There are a number of different versions that you
7 have seen of that same document; is that right?

8 A. There are a number of similar documents that have
9 different figures on them, yes.

10 Q. That's correct.

11 Where are those?

12 A. They are in evidence.

13 Q. Have you brought them with you?

14 A. No, sir, I have not.

15 Q. You just picked this one out?

16 A. No, sir. I didn't pick it out. I brought it with
17 me because it was the one that was used to prepare the tax
18 return.

19 Q. How do you know that?

20 A. Because it's on the tax return. And the tax
21 return had to be filed, because the exact refund amount
22 that's on the return was sent to Mr. Democker in a refund.

23 Q. How do you know that Mr. Raider used that document
24 in front of you to prepare the tax return?

25 A. Because Mr. Raider has seen that document and told

1 us that is what he used.

2 Q. Did he have a copy of it when you interviewed him?

3 A. I gave him my copy, and he confirmed that that's
4 the one he used.

5 Q. This one, and not some other version with some
6 other number?

7 A. That's correct.

8 Q. You're absolutely certain?

9 A. Absolutely certain.

10 MR. SEARS: No objection.

11 THE COURT: 125 is admitted.

12 DIRECT EXAMINATION RESUMED

13 BY MR. BUTNER:

14 Q. Let me show you Exhibit 123.

15 Do you recognize this document?

16 A. Yes, sir, I do.

17 Q. What is it?

18 A. It is a Retiring Financial Advisor Agreement.

19 Q. And where did you obtain this agreement?

20 A. This agreement was taken out of the records that
21 were given to us by Anna Young.

22 MR. SEARS: I'm sorry, by whom?

23 THE WITNESS: Anna Young.

24 MR. SEARS: Thank you. Also known as
25 Anna Young.

1 MR. BUTNER: Anna Young.

2 MR. SEARS: Thank you.

3 MR. BUTNER: I would move for the admission of
4 Exhibit 123.

5 MR. SEARS: May I have questions on voir dire,
6 Your Honor?

7 THE COURT: Yes.

8 VOIR DIRE EXAMINATION

9 BY MR. SEARS:

10 Q. This document, this Retiring Financial Advisor
11 Agreement that you have in front of you, is not signed by
12 anyone; is it?

13 A. No, sir.

14 Q. And the bottom of the first page, circled, is the
15 notation "Not For Public Use"; is that correct?

16 A. That's correct.

17 Q. Do you have any information whatsoever that at any
18 point in time Mr. Democker actually executed this Retiring
19 Financial Advisor Agreement?

20 A. No, sir.

21 MR. SEARS: Relevance.

22 THE COURT: Mr. Butner, relevance?

23 MR. BUTNER: Judge, there was a dispute in the
24 divorce that this particular document has significance in,
25 and it was used by this witness in offering some of his

1 opinions, and of course it's discovered from the defendant's
2 attorney.

3 Basically, it goes to what is called a
4 "Book of Business," for people that perform the occupation
5 that Mr. Democker was performing during the time of the
6 marriage with Carol Kennedy -- that is, a financial advisor
7 or a stockbroker, a Book of Business with clientele. And
8 this goes to the existence of a Book of Business when someone
9 moves from one entity, such as a brokerage house, to another
10 one, such as UBS.

11 THE COURT: I'll sustain the objection.

12 DIRECT EXAMINATION RESUMED

13 BY MR. BUTNER:

14 Q. Mr. Echols, did you review these documents with a
15 thought in mind as to investigating what was going on in the
16 Democker/Kennedy divorce?

17 A. Yes, sir, I did.

18 Q. And what was the significance of the Financial
19 Advisor Agreement, in that regard?

20 MR. SEARS: He is being asked a question about
21 a document not in evidence, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: We had been presented letters,
24 as we investigated the financial records, and specifically
25 the net assets and liabilities that were submitted to the

1 Court. We noted that there was not an indication of a
2 retirement agreement between UBS and Mr. Democker, so we
3 investigated that issue and we found the letter from
4 Mr. Democker to his attorney, Anna Young, in which he
5 stipulated that there was no such agreement.

6 Then Anna Young -- we have a letter from
7 Anna Young to Mr. Fruge, who is Ms. Kennedy's divorce
8 attorney, that in fact there was never, nor would there ever
9 be, an agreement between a retiring financial analyst for the
10 sale or remuneration having to do with his Book of Business.

11 BY MR. BUTNER:

12 Q. Now, what's the significance of a Book of Business
13 in the context of the divorce?

14 A. The significance is, is that they were telling her
15 attorney that such an agreement did not exist and, in fact,
16 we had paperwork in the file that said that it did exist and
17 that it was available.

18 Q. In the context of a divorce, is a Book of Business
19 an asset or a liability?

20 A. It's an asset.

21 Q. And in this particular divorce, who had that
22 asset?

23 A. That asset would be associated with the
24 relationship that Mr. Democker had with his clients.

25 Q. And in fact, was that an issue in the divorce as

1 to whether there was a Book of Business in existence?

2 A. That was an issue, yes.

3 MR. SEARS: Excuse me, I have an objection
4 here. The divorce decree in this case, that the State has
5 marked for identification, deals with the Book of Business.
6 It was resolved in the divorce.

7 This document that the Court has not
8 admitted yet, never been signed by anybody -- Mr. Echols has
9 now talked about two letters that he has looked at, none of
10 which are before the Court here, none of which have been
11 produced here.

12 The State is proceeding with Mr. Echols
13 as if the Court has somehow admitted this Retiring Agent's
14 Agreement. I will avow to the Court it was never signed, it
15 was not in effect, it was not available, and it is not, as
16 represented by Mr. Echols thus far in his testimony. And I
17 object to the State being permitted to continue to question
18 him about a matter which is not in evidence, which is, is
19 there a Retiring Agent Agreement that applies to Mr. Democker
20 in this case. And I will avow to the Court that there was
21 not and is not such an agreement.

22 THE COURT: Mr. Butner?

23 MR. BUTNER: Judge, first of all, I have not
24 elicited any testimony from this witness that Mr. Democker
25 signed such an agreement, and I am not suggesting that that's

1 the case.

2 What I am suggesting is that this kind of
3 Retiring Financial Advisor Agreement indicates that when a
4 financial advisor retires, they have what is called a Book of
5 Business, and they can get payments from that Book of
6 Business.

7 This goes to whether a Book of Business
8 exists or not -- something that was denied by Mr. Democker
9 throughout the divorce. And yet, this particular document
10 was in the possession of his attorney, Anna Young, and it
11 goes to whether --

12 THE COURT: Of his attorney?

13 MR. BUTNER: Of Mr. Democker's attorney. And
14 she gave her file to us.

15 THE COURT: Mr. Sears?

16 MR. SEARS: I know a great deal about this
17 document, Your Honor. It was a proposal. I can bring
18 Anna Young on now or later to testify, but it never went into
19 effect. It was not available to Mr. Democker at the time of
20 the divorce. It was never signed.

21 But most importantly, it doesn't talk
22 about a Book of Business. It simply says in general
23 terms -- and the Court is welcome to read this -- that the
24 firm, UBS, has an interest in preserving their client base,
25 which is the opposite of a Book of Business that belongs to

1 the financial advisor.

2 And that when a person in Mr. Democker's
3 capacity announces that he's going to retire, they offer him
4 the opportunity to stay with them as a consultant. He has to
5 work. He can't go play golf. He can't sit home. He has to
6 come and work for a reduced compensation, based on the value
7 of his business.

8 The difference is, it's not a portable
9 Book of Business that has value. It's wages for work. And
10 the purpose of the work is to transition his clients -- who
11 belong to UBS, not to him -- to the next financial advisor.
12 That is what this agreement is.

13 And it says very clearly that if during
14 the period of time the retiring financial advisor dies, his
15 employment is terminated by UBS for cause or is terminated
16 because of disability, the deal is over. He has no right to
17 receive any future compensation. It is an agreement for
18 employment when a person announces they're retiring. That is
19 what it is.

20 And this characterization by both
21 Mr. Butner and Mr. Echols that it is a retirement agreement
22 is absolutely contrary to this document.

23 Most importantly, it does not apply in
24 this case, and it never did.

25 THE COURT: The testimony seems irrelevant to

1 me. Move on.

2 BY MR. BUTNER:

3 Q. Let me show you what has been marked as
4 Exhibit No. 124.

5 Do you recognize this particular
6 document?

7 A. Yes, sir, I do.

8 Q. What is it?

9 A. It is the Letter of Understanding between
10 Mr. Democker and UBS when he went to work for UBS in 2004.

11 MR. BUTNER: And -- I move for the admission
12 of Exhibit 124.

13 MR. SEARS: Relevance, Your Honor. It is four
14 years before the death of Miss Kennedy, and it is simply his
15 package of benefits that he received at the time. It is
16 utterly irrelevant to the issues, even as the State casts
17 them in this case.

18 THE COURT: Is it signed?

19 THE WITNESS: Yes, sir.

20 THE COURT: By Mr. Democker?

21 THE WITNESS: Yes, sir.

22 THE COURT: I will admit 124.

23 MR. BUTNER: Thank you.

24 Q. Basically what does this Letter of Understanding
25 describe, so to speak?

1 MR. SEARS: Objection. The evidence speaks
2 for itself, Your Honor.

3 THE COURT: Sustained.

4 BY MR. BUTNER:

5 Q. Did you review this Letter of Understanding as
6 part of your review of documents in connection with your
7 testimony in this case?

8 A. Yes, sir, I did.

9 Q. And as part of the Letter of Understanding, did
10 Mr. Democker receive advance compensation for bringing his
11 Book of Business from his former employer over to UBS?

12 MR. SEARS: Objection. Leading.

13 THE COURT: Overruled.

14 THE WITNESS: That's correct.

15 BY MR. BUTNER:

16 Q. Would you tell us how much he received as advance
17 compensation for bringing his Book of Business from his
18 former employer?

19 A. This particular Letter of Understanding says
20 \$612,708 in cash.

21 And then I believe there is \$204,236 in
22 stock and other compensation that he would receive after it
23 was vested, and the vesting period was six years.

24 In addition, the agreement calls for the
25 opportunity to receive a second and third amount of money

1 based on the production that was brought to UBS.

2 In addition, there was an opportunity to
3 receive, based on production -- there was an opportunity for
4 him to recap the lost portion of his deferred compensation
5 that he lost when he left A.G. Edwards. Because he left, he
6 lost part of that vesting. This agreement also gave him the
7 opportunity to recapture that lost amount based on
8 production. And it basically sets down how this cash is
9 going to be paid to him, under what length of period,
10 describes an employee-forgivable loan. That is how the
11 compensation was handled, in effect, for him to be able to
12 earn the cash amount over a six-year period.

13 Q. So when did Mr. Democker move from A.G. Edwards to
14 UBS, as evidenced by this agreement?

15 A. This document was signed on 8/17 of 2004.

16 My recollection is that he actually went
17 to work, I believe, in September of 2004.

18 Q. And did this document govern Mr. Democker's
19 employment through the date of July 2nd of 2008?

20 MR. SEARS: objection. Misstates the
21 document. This document is simply advanced compensation.
22 It's not an employment agreement.

23 THE COURT: Sustained.

24 BY MR. BUTNER:

25 Q. In reviewing this document, did it make reference

1 to some other form of agreement that governed Mr. Democker's
2 employment?

3 A. It has been a while since I read this agreement.
4 I would to have look at it again, but my recollection is that
5 it defines the terms of the Letter of Understanding that he
6 would come to work for UBS. And based on his production, he
7 would be given advanced payments. And that as long as his
8 employment continued with UBS, he would not have to repay
9 those advances. So it was tied to his employment.

10 Q. And did you look at the Financial Affidavit filed
11 by Mr. Democker in connection with his divorce from Carol
12 Kennedy and compare it with the compensation package outlined
13 in the Letter of Understanding?

14 A. Yes, I did.

15 Q. And what did you note in regard to that
16 comparison?

17 MR. SEARS: Your Honor, I have a series of
18 objections here. If I can have a couple of questions on voir
19 dire?

20 THE COURT: You may.

21 VOIR DIRE EXAMINATION

22 BY MR. SEARS:

23 Q. You would agree, Mr. Echols, that the financial
24 affidavits filed in the divorce were filed sometime after
25 March of 2007; correct?

1 A. I'm sorry. State that again.

2 Q. You would agree with me, would you not, that the
3 financial affidavits in evidence in this case, that you
4 brought here today, prepared by Mr. Democker in his divorce,
5 would have been filed sometime after March of 2007?

6 A. I would agree with that.

7 Q. You would agree with me that this agreement, this
8 Letter of Understanding that we have just been speaking of,
9 was in the Summer of 2004, three years or so before those
10 affidavits were filed; correct?

11 A. That's correct.

12 Q. Okay. This agreement talks about a number of
13 things. It talks about some up-front payment in the nature
14 of an employee-forgivable loan; correct?

15 A. Correct.

16 Q. And there is deferred compensation; there is a
17 deferred compensation agreement with a vesting period tied to
18 it; correct?

19 A. Correct.

20 Q. Now, Mr. Butner just asked you about the financial
21 affidavits in connection with the divorce; correct?

22 A. Correct.

23 Q. Those were affidavits required to be prepared and
24 filed, to your understanding, in connection with the divorce
25 proceeding in this courthouse; correct?

1 A. That's correct.

2 MR. SEARS: Relevance. This agreement is
3 three years plus before that. The affidavits are required to
4 show current income and liabilities. One is not connected to
5 the other.

6 And moreover, all the matters in the
7 divorce were matters that were handled by parties represented
8 by competent counsel and resolved by a Final Decree of
9 Dissolution of Marriage on May 28, 2008.

10 THE COURT: Overruled.

11 DIRECT EXAMINATION RESUMED

12 BY MR. BUTNER:

13 Q. I don't know if you recall the question, but I
14 asked you if you compared the Letter of Understanding with
15 the financial affidavits that Mr. Democker filed in
16 connection with the divorce. And your answer was?

17 A. Yes, I did.

18 Q. And when you compared them, did you note that
19 compensation, as outlined under the terms of that financial
20 -- that Letter of Understanding was referenced in those
21 financial affidavits filed in the divorce?

22 A. Part of it was, yes.

23 Q. Tell us how they correlate.

24 A. While on the financial statements that were
25 submitted to the Court --

1 MR. SEARS: I have a new objection, Your
2 Honor.

3 This Court had a discovery cutoff for
4 purposes of this hearing on October 2nd. We have filed a
5 motion, a Motion For Reconsideration thus far.

6 Mr. Echols now is about, apparently, to
7 launch into a discussion of matters which have never been
8 disclosed. The documents have been disclosed, but
9 Mr. Echols's opinions and examination have never been
10 disclosed.

11 The only words from Mr. Echols's that
12 have ever been disclosed to us in this case, after more than
13 a year's worth of work, are four pages, which the Court has
14 seen. All of these opinions, all of this investigation, all
15 of what he is about to say about these documents and divorce
16 documents should be, in our view, precluded here, based on
17 the Court's order. They were not disclosed. We knew this
18 was going to happen, and now it has happened.

19 We ask the Court to enforce its own
20 order, to preclude the State from going into new opinions
21 from a witness that were easily available months and months
22 ago but were never disclosed.

23 THE COURT: Mr. Butner.

24 MR. BUTNER: Judge, his opinions were
25 disclosed in the letter that was provided to Court and

1 counsel, and his opinions were based upon these documents.
2 It is as simple as that, and that's where I am going with
3 this.

4 Also, the Court denied the motion to
5 reconsider limiting the testimony in this hearing.

6 THE COURT: Overruled. You may proceed.

7 MR. BUTNER: Thank you.

8 Q. Did you correlate the Letter of Understanding with
9 the financial affidavits that were filed in connection with
10 the divorce between Mr. Democker and Carol Kennedy?

11 A. Yes. We matched the -- in fact, we matched the
12 payments that were -- the forgivable loan payments in each of
13 the years since the agreement up to the current time and
14 matched that they were done, and that the agreement was being
15 complied with.

16 We noticed on the financial statement
17 that was submitted to the Court that the liability for this
18 document appeared on the financial statement, but the asset
19 portion of this agreement did not.

20 Q. And what is the asset portion of that agreement?

21 A. The asset portion has to do with the earned
22 deferred income.

23 Q. Would you explain to us, please --

24 MR. SEARS: Your Honor, I have an objection to
25 the last question. I didn't get up in time before Mr. Echols

1 came through with his answer. May I have a couple of
2 questions on voir dire on that point?

3 THE COURT: Yes.

4 MR. SEARS: Thank you.

5 VOIR DIRE EXAMINATION

6 BY MR. SEARS:

7 Q. Mr. Echols, are you saying that the
8 employee-forgivable loan that was paid out in 2004 to
9 Mr. Democker, which had a forgivable part of which he owed
10 federal income tax each year, was an asset?

11 A. No, sir. That is not what I said.

12 Q. Okay. You are saying the deferred compensation
13 portion of the agreement was an asset that needed to be
14 represented on his financial statements?

15 A. I am saying the financial statement recognized
16 that the agreement existed by showing the liability that was
17 on the financial statement, but didn't list the corresponding
18 asset.

19 Q. What is the corresponding asset?

20 A. The deferred compensation.

21 Q. That didn't vest until 2010; did it?

22 A. It doesn't have anything to do with the 2010
23 vesting. It had to do with the forgivable loan for the next
24 three years.

25 Q. The money had been received in 2004, and a portion

1 of it was forgiven each year, and Mr. Democker reported that
2 and paid income tax on it; isn't that right?

3 A. That's correct.

4 Q. Show me where on one of the financial statements
5 you believe he should have listed that as an asset.

6 A. Yes, sir, I can.

7 This is the respondent's --

8 Q. Let's look at the exhibits, if we could, please.

9 A. Exhibit No. 121, the last page indicates the
10 marital assets and the liabilities of the community estate.

11 Under "Assets," there is nothing listing
12 anything to do with this contract. However, under
13 "Liabilities" we show that there is an EFL loan balance of
14 \$273,469; a secondary note of 108,294, showing the tax
15 liability that would be incurred on the deferred income yet
16 to be earned. And yet, the deferred income is not on the
17 statement.

18 So you are showing the liability and the
19 tax consequences of the money, but you don't show the money
20 as an asset.

21 Q. We'll get to that point later.

22 That document was submitted in a Yavapai
23 County Superior Court Dissolution of Marriage proceeding;
24 correct?

25 A. Correct.

1 Q. And it was sent to Carol Kennedy's attorney;
2 correct?

3 A. I assume. Correct. Yes.

4 Q. When? There is a date on the document there,
5 showing when it was sent by Mr. Democker's attorney.

6 A. You'll have to show me that. I am not familiar
7 with those documents and dates, but if you will point it out.

8 The document was signed, I believe, on
9 January 31st of 2008.

10 Q. This document doesn't have a certificate of
11 mailing, but it shows it was filed on February 1, 2008.
12 That's the clerk's file stamp; correct?

13 A. Correct.

14 Q. Now, you looked at Anna Young's divorce file;
15 correct?

16 A. Yes, sir.

17 Q. Did you talk to Mr. Fruge?

18 A. Did I talk to Mr. Fruge? No.

19 Q. You read interviews with Mr. Fruge?

20 A. Yes, I have

21 Q. Are you aware of any motion brought by Mr. Fruge
22 in that divorce proceeding seeking to compel different
23 information or corrections to information?

24 MR. BUTNER: Judge, this is way beyond the
25 scope of voir dire at this point concerning this particular

1 exhibit and this witness's testimony.

2 THE COURT: Mr. Sears?

3 MR. SEARS: Same objection. Res judicata and
4 finality, Your Honor. That information was provided to a
5 person who was represented by competent counsel months before
6 the divorce. The matters in it are part of a divorce case
7 that was resolved by a non-appealed final judgment of
8 dissolution of marriage on May 28, 2008.

9 To go back now, as Mr. Echols apparently
10 wants to do with the assistance of Mr. Butner, and go back
11 and pull out matters from that divorce case, flies in the
12 face of all principles of finality. The matters were
13 resolved. There is no suggestion that Mrs. Kennedy was not
14 adequately represented in this case.

15 The entire thrust of what I think
16 Mr. Echols wants to tell you here today is going back and
17 relitigating the final divorce case -- relitigating the case
18 and pulling things out, out of context, and saying this is
19 what we are going to do, this is a problem, and this is a
20 problem. That is not appropriate evidence for purpose of a
21 Chronis hearing.

22 They have to have proof of something that
23 connects to one of the aggravators that conceivably could be
24 implicated in financial matters; pecuniary gain, witness
25 killing, or cold and calculated. There is nothing else that

1 this could be relevant to.

2 So going back here and relitigating the
3 Kennedy/Democker divorce case serves no purpose. My
4 objection is it is utterly irrelevant.

5 MR. BUTNER: Might I respond, Judge?

6 THE COURT: You may.

7 MR. BUTNER: Judge, we have already put
8 evidence before the Court -- the e-mails between Steven
9 Democker and Carol Kennedy, indicating that Carol Kennedy was
10 very upset and dissatisfied with the resolution of her
11 divorce case, that she planned on taking Mr. Democker back to
12 court to get some of what she perceived to be inequities
13 resolved.

14 And this actually goes directly to that.
15 She felt that he had not been truthful in his filings with
16 the court in the divorce case, and this tends to demonstrate
17 that that is, in fact, the case.

18 And she was not, as Mr. Sears says,
19 satisfied with her representation in that case. She felt
20 that her lawyer had let her down.

21 We will present documentation from the
22 CPA and forensic accountant, Mr. Casalena, that he had
23 advised her that her attorney had let her down, in connection
24 with that divorce.

25 And in fact, this directly goes to the

1 motivation in this case for Mr. Democker killing Carol
2 Kennedy -- going back to court -- and it is all over money,
3 Your Honor -- thousands and thousands of dollars.

4 And then also, killing her because she
5 was going to turn him in, so to speak, to the IRS, or at
6 least file a tax return that was directly in contradiction
7 with the income tax return that he had filed, and get him in
8 trouble that way, so to speak. These things would end up
9 causing him to lose his license to be a financial advisor.

10 THE COURT: To the extent that this is a
11 motion to strike, which I think is what Mr. Sears is
12 requesting, I am going to deny that.

13 You may proceed.

14 MR. BUTNER: Thank you.

15 DIRECT EXAMINATION RESUMED

16 BY MR. BUTNER:

17 Q. If I understood your earlier testimony, just to
18 get back on track, you told us that the Letter of
19 Understanding between UBS and Mr. Democker indicated the
20 presence of an asset, so to speak, that was not reflected in
21 the financial statements that were filed with the Court in
22 Mr. Democker's divorce.

23 A. That's correct.

24 Q. And would you describe for us the assets, again,
25 please, or assets.

1 A. Well, if the financial statement is going to
2 record the liability of the unforgivable loan, and it's going
3 to record --

4 MR. SEARS: Excuse me, Your Honor. I think
5 it's a "forgivable loan", is it not?

6 MR. BUTNER: Yes. It's forgivable.

7 THE WITNESS: What did I say?

8 MR. BUTNER: "Unforgivable."

9 THE WITNESS: Excuse me.

10 THE COURT: So noted.

11 THE WITNESS: If the balance sheet is going to
12 show the liability that exists for this forgivable loan, and
13 it is going to record the taxes that would be due on future
14 payments of forgiveness of that, then the balance sheet has
15 got to show the asset associated with both that liability and
16 that tax liability associated with the asset.

17 What we have is a liability and a tax
18 liability associated with an asset that is not shown on the
19 tax return.

20 BY MR. BUTNER:

21 Q. And did either of those financial affidavits --
22 that is, the First Financial Affidavit or the Amended
23 Financial Affidavit -- did either one of those show the
24 assets associated with the Letter of Understanding Employment
25 Agreement with Mr. Democker and UBS?

1 A. No.

2 Q. So how much money -- or how much in assets did you
3 determine were left out, so to speak, on the financial
4 affidavits filed with the Court?

5 A. Well, he had three years left of approximately
6 \$91,000 a year in the forgivable loan that was yet to be
7 earned. So you had about \$270,000.

8 I would suggest, however, that the
9 easiest way to look at it is that whatever the liability is,
10 it should be offset by the asset, at a minimum.

11 Q. And the problem, then, with those financial
12 affidavits is only the liability was there, not the asset?

13 A. That's correct. Which gave the effect of reducing
14 the value of the estate.

15 Q. Did Mr. Democker also have a stock type of asset
16 that he was acquiring as he progressed in his employment with
17 UBS?

18 A. That original amount that was given in the Letter
19 of Understanding was in an account that was growing, but it
20 had a bullet vesting -- in other words, none of it vested
21 until he had been there six years, and at the end of that six
22 years, it would then begin to vest through, I believe, the
23 tenth year. So that money was being earned and was there but
24 was not yet vested.

25 Q. Now you indicated in your earlier testimony that

1 the 2004, '5, and '6 tax returns filed by Mr. Democker were
2 attached to one or more of those financial affidavits; is
3 that correct?

4 A. That's correct. That same affidavit that we are
5 talking about, 121, they are attached there.

6 Q. Okay. And did they show Mr. Democker's income as
7 he proceeded through the term of this Letter of
8 Understanding?

9 A. Yes, they did.

10 Q. And was he making his income, so to speak, in a
11 progression that concurred with the Letter of Understanding?

12 A. Yes.

13 MR. SEARS: Objection. Form of the question
14 is ambiguous.

15 THE COURT: Overruled.

16 THE WITNESS: Yes. The agreement called for
17 the opportunity for him after, I believe it was a 14-month
18 period, that they would calculate his production based on his
19 best twelve months. And if, in fact, that twelve months was
20 greater than the agreed-upon production that he came with
21 from A.G. Edwards, that there would be additional money that
22 would be available to him.

23 BY MR. BUTNER:

24 Q. In the form of what?

25 A. In the form of an employee-forgivable loan.

1 Q. And in fact, did he get these additional monies by
2 way of another employee-forgivable loan?

3 A. Yes, sir, he did.

4 Q. And so what did that indicate to you?

5 A. That indicated that the production that he had at
6 A.G. Edwards was obtained within 14 months of being with UBS.

7 Q. And was this all based upon his Book of Business
8 that he brought from A.G. Edwards over to UBS?

9 A. That's correct.

10 Q. Did you see evidence in his income tax statements
11 and the financial affidavits that, in fact, his production
12 was increasing each year?

13 A. Yes. The tax returns point that out from the
14 affidavit. It showed that while he was still with
15 A.G. Edwards for the year 2004, his wages were 301,000; in
16 2005, it went to 315; and in 2006, it went to 374; and we
17 know that in 2007, it went to 526.

18 Q. In 2007, he received \$526,000 in compensation from
19 his employer at UBS?

20 A. Let me confirm that.

21 526,966. Yes.

22 Q. And at one point in time, in an interview
23 conducted with Mr. Democker, did he indicate that he could
24 take his Book of Business down the street and that another
25 brokerage house would, in fact, write him a check for a

1 million dollars or more?

2 MR. SEARS: Objection. Leading. Refers to
3 documents in this case not in evidence.

4 THE COURT: Sustained.

5 BY MR. BUTNER:

6 Q. Did you review an interview of Mr. Democker in
7 connection with your analysis of these financial documents?

8 A. Yes, sir, I did.

9 Q. Okay. When did that interview take place?

10 A. October 23rd of 2008.

11 Q. And what did Mr. Democker say in connection with
12 his Book of Business in that interview?

13 MR. SEARS: Objection. Calls for hearsay.
14 Has the witness talk about something not in evidence.

15 THE COURT: Overruled.

16 THE WITNESS: He indicated that he could walk
17 down the street and obtain a million dollars for his Book of
18 Business.

19 BY MR. BUTNER:

20 Q. And that was on October 23rd of the year 2008;
21 right?

22 A. That's correct.

23 Q. And in 2004, he was given over \$800,000 in
24 compensation for his Book of Business when he came from A.G.
25 Edwards over to UBS; is that correct?

1 A. That's correct.

2 Q. Did you see evidence that that asset of Book of
3 Business was reflected anywhere on the financial statements
4 that Mr. Democker filed with the Court in connection with his
5 divorce from Virginia Carol Kennedy?

6 A. Only the liability portion. No asset portion.

7 Q. Did you form a conclusion in regard to that lack
8 of mention, so to speak, of the asset in connection with the
9 financial affidavits that were filed in the dissolution?

10 A. The conclusion I came to is that in submitting a
11 financial statement, where you list the liability associated
12 with the asset but you don't list the asset, is incorrect.
13 It was improperly prepared.

14 Q. And you are a certified fraud examiner; is that
15 correct, sir?

16 A. Yes, sir.

17 Q. Was that a fraudulent representation of the
18 defendant's assets in connection with the dissolution action
19 with Virginia Carol Kennedy?

20 A. I think a reasonable person would conclude that,
21 given that the liability was very accurate, the tax
22 consequences were very accurate. The only thing that was
23 missing was the asset. So I think a reasonable person would
24 conclude that it was left off for a reason.

25 Q. Let me show you what has been marked as Exhibit

1 No. 135.

2 Do you recognize that document?

3 A. Yes, sir, I do.

4 Q. What is it?

5 A. That is the report issued by Mr. Casalena to
6 Mr. Fruge, based on the work that he was asked to do by
7 Mrs. Kennedy with respect to the financial research that he
8 had done on their assets.

9 Q. And was it your understanding that that also was
10 provided to Virginia Carol Kennedy in connection with her
11 divorce?

12 A. We received a copy of this from Carol's records,
13 and we received a copy of this from Anna Young's record.

14 Q. And did Mr. Casalena offer opinions as to whether
15 Mr. Democker had submitted accurate financial affidavits in
16 connection with the divorce?

17 A. In this agreement?

18 Q. In that report from Mr. Casalena.

19 A. Yes.

20 Q. Did Mr. Casalena agree with your opinion?

21 A. Yes.

22 Q. So he thought those financial affidavits submitted
23 in the divorce were inaccurate, also; is that correct?

24 A. In addition, he felt the Book of Business value
25 should have also been included in those assets.

1 Q. And did he advise Virginia Carol Kennedy that the
2 Book of Business value was not included in the assets?

3 A. Yes.

4 MR. SEARS: Your Honor, objection. Hearsay.
5 Document's not in evidence. My client has a Sixth Amendment
6 confrontation right to have Mr. Casalena here. This is the
7 kind of hearsay that should not be admitted in this
8 proceeding, to offer the report and then ask Mr. Echols
9 whether he agrees and whether Mr. Casalena agrees is
10 impossible to defend against in this case. Mr. Casalena
11 needs to be here and express his own opinions.

12 THE COURT: I don't find that this is a
13 Crawford-style issue for this type of hearing. On the other
14 hand, he is testifying from an exhibit that hasn't been
15 admitted, and I will sustain that objection.

16 MR. BUTNER: I'd move that it be admitted,
17 Judge.

18 MR. SEARS: Your Honor, my objection now is
19 foundation, confrontation, Sixth Amendment.

20 This is not the kind of hearsay that Chronis
21 versus Steinle or any of the cases we've previously provided
22 the Court would contemplate being admissible in this or even
23 in a preliminary hearing under Rule 5. It's not reliable.

24 There's no foundation from this witness
25 possible that would support the basis for all the conclusions

1 and opinions in this other report.

2 And the fact is that Mr. Casalena was
3 retained in the divorce case, never appeared in court, never
4 testified. And the issues that he raised were resolved or
5 waived. So it's immaterial what Mr. Casalena thought about
6 these matters today.

7 THE COURT: I will sustain the objections with
8 regard to foundation and immateriality of Mr. Casalena's
9 report. I will sustain the objection to the exhibit and deny
10 its admission.

11 What is the number, again, please?

12 MR. BUTNER: 135, I believe, Judge.

13 THE WITNESS: 135.

14 THE COURT: The testimony I've received to
15 this point, since there wasn't an objection preceding it, I
16 will note that I am not striking that, but let's move on.

17 BY MR. BUTNER:

18 Q. Mr. Echols, did you review these reports? Let me
19 back up a second.

20 If I understood your earlier testimony,
21 you indicated that this report was in Carol Kennedy's
22 documents that were found at her home after the homicide; is
23 that correct?

24 A. That's correct.

25 Q. Did you find evidence that Virginia Carol Kennedy

1 was upset about the way that her divorce was concluded?

2 A. Yes.

3 Q. What was that evidence?

4 A. Multiple e-mails between Carol Kennedy and
5 Mr. Casalena, e-mails between Carol Kennedy and Jodie -- I
6 believe it's Jodie Brown. And I believe there's a couple
7 from Mr. Democker to Carol, that we saw.

8 Q. And did you see indications that Carol Kennedy had
9 informed Mr. Democker that she was going to take him back to
10 Court as a result of the unsatisfactory resolution of her
11 divorce?

12 A. Yes.

13 Q. What are those?

14 MR. SEARS: I'm sorry, Your Honor. Foundation
15 as to date, time, and place.

16 THE COURT: Sustained.

17 BY MR. BUTNER:

18 Q. And what were those indications that you've just
19 described?

20 MR. SEARS: Same objection. Foundation as to
21 date, time, and place. These communications, if they exist,
22 let's get them out.

23 THE COURT: I think that's the only way to
24 answer the question, so sustained.

25 MR. BUTNER: All right.

1 Q. Mr. Echols, what did you review as communication
2 from Virginia Carol Kennedy?

3 A. All of the e-mails that were on her computer and
4 any e-mails that may have been in her possession,
5 hard-copy-wise from records that were picked up at her house.

6 Q. And in reviewing those e-mails that were found at
7 her house after her death, had she made notations about her
8 dissatisfaction with the resolution of the divorce?

9 A. Yes.

10 MR. SEARS: Foundation as to date, time, and
11 place. If there are e-mails, let's see them, please.

12 THE COURT: Let's see them, please.

13 MR. BUTNER: They're already admitted, Judge.

14 THE COURT: Sustained.

15 MR. BUTNER: Judge, the e-mails that we're
16 talking about are already admitted into evidence.

17 THE COURT: I don't know that that's what the
18 witness knows.

19 BY MR. BUTNER:

20 Q. Do you have with you today copies of the e-mails
21 that you reviewed in connection with the dissolution of Carol
22 Kennedy and Steven Democker?

23 A. I believe I have a few of them, yes.

24 Q. Could you tell us the dates of the e-mails that
25 you reviewed?

1 MR. SEARS: Your Honor, might this be a time
2 we can take a brief recess?

3 MR. BUTNER: I think it's a good idea, Judge.
4 I have to dig them out of the exhibits.

5 THE COURT: I know that generally we've
6 received in evidence 33 through 48, and then 53 through 60
7 that are in evidence, and then 63 through 65.

8 So I recognize that you have a number of
9 exhibits to go over, and this would seem like a good time,
10 then, to take a break and let you find those and go through
11 them.

12 Let's take about 15 minutes to a quarter
13 to 11:00.

14 (Brief Recess.)

15 THE COURT: Record reflects Mr. Echols is
16 still on the stand. Mr. Butner examining, and the defendant
17 and his counsel present.

18 You may proceed.

19 DIRECT EXAMINATION RESUMED

20 BY MR. BUTNER:

21 Q. Mr. Echols, you examined e-mails between
22 Mr. Democker and Carol Kennedy; is that correct, sir?

23 A. That's correct.

24 Q. And those e-mails basically began on or about what
25 date that you examined?

1 A. They would have gone all the way back to probably
2 November of 2006.

3 Q. Okay. And -- but when they got involved in the
4 divorce -- first of all, do you know when the divorce
5 commenced, so to speak, in the Court?

6 A. I believe she filed on the 17th of March, 2007.

7 Q. Let me show you what has been marked as Exhibit
8 134 and 133.

9 Do you recognize these documents?

10 A. Yes, sir, I do.

11 Q. What is Exhibit 134?

12 A. 134 is the Acceptance of Service, dated the 30th
13 of March, 2007.

14 Q. Acceptance of Service by Mr. Democker?

15 A. Correct.

16 Q. Of the Dissolution Proceedings Petition?

17 A. That's correct.

18 Q. And then what is 133?

19 A. It's a preliminary injunction from the same court
20 concerning the marriage that is dated March the 9th of 2007.

21 MR. BUTNER: I move for the admission of those
22 two documents, Your Honor.

23 MR. SEARS: No objection.

24 THE COURT: 133, 134 are admitted.

25 MR. BUTNER: Thank you.

1 Q. And did you review e-mails going as far back as
2 the beginning of March of 2007 evidencing the ongoing
3 financial dispute between Mr. Democker and Carol Kennedy?

4 A. Yes, sir.

5 Q. And then let me show you what has been admitted
6 into evidence as Exhibit No. 119. And then Exhibits 45, 53,
7 55, 56, 57, 60, 63, 64, and 65 -- all of these already having
8 been admitted.

9 Do you recognize those documents?

10 A. Yes, sir, I do. Those are all e-mails that we
11 have previously reviewed.

12 Q. And did you also look at what's been already
13 admitted into evidence as Exhibits 40, 41, 42 and 44?

14 A. Yes. These are additional e-mails that we
15 reviewed.

16 Q. Okay. And in connection with reviewing those
17 e-mails, what was the gist of what was going on between Carol
18 Kennedy and Mr. Democker?

19 A. Are we talking about --

20 MR. SEARS: Objection, Your Honor. The
21 e-mails speak for themselves.

22 THE COURT: Sustained.

23 BY MR. BUTNER:

24 Q. How did you use those e-mail communications in the
25 preparation of your conclusions in connection with the

1 financial matters between Carol Kennedy and Steven Democker?

2 A. We used these e-mails to document the figures that
3 were on the tax returns, as well as confirm the understanding
4 between the parties as to what they are agreeing to in the
5 divorce decree, and to document the fact that both Steven
6 Democker and Carol Kennedy were aware of the financial
7 circumstances that they were in.

8 Q. What were the financial circumstances that, first
9 of all, Carol Kennedy was in as of the date of her death,
10 July 2nd of the year 2008?

11 MR. SEARS: Objection to the form of the
12 question. Vague. Calls for a narrative answer.

13 THE COURT: Overruled.

14 THE WITNESS: She had not received her second
15 spousal payment from Mr. Democker. She had received her
16 first, but prior to that time, she had been receiving about
17 \$700 a month from Mr. Democker as assistance for her bills.

18 BY MR. BUTNER:

19 Q. 700?

20 A. \$700 per month.

21 She was also earning revenue where she
22 working, so she had an amount of income that she was living
23 on.

24 Mr. Democker was paying the expenses that
25 were referred to in the temporary orders; the house

1 payment, both payments, the car payments, and the telephone
2 and the trash, and those types of things.

3 So in terms of -- if I understand your
4 question, what kind of financial condition she was in, she
5 was very strapped.

6 Q. Did she have enough money to make ends meet, so to
7 speak?

8 MR. SEARS: Objection. Form of the question.

9 THE COURT: Sustained.

10 BY MR. BUTNER:

11 Q. Did she have enough money to meet her monthly
12 obligations?

13 A. She was having difficulty paying her bills.

14 Q. Did she indicate that to Mr. Democker in the
15 e-mails?

16 A. Yes.

17 MR. SEARS: Foundation as to date, time, and
18 which e-mail.

19 THE COURT: Sustained.

20 MR. SEARS: Move to strike the answer.

21 THE COURT: Granted.

22 BY MR. BUTNER:

23 Q. Can you point to the e-mails where she indicated
24 to Mr. Democker that she was having trouble paying her
25 monthly obligations?

1 A. I've got about 40 here. If you'll give me a
2 minute, I'll find it.

3 Q. While you are doing that, did you review a packet
4 of e-mails that were found at Carol Kennedy's house after her
5 death that had notations from Carol Kennedy on them?

6 A. Yes.

7 Q. In regard to those e-mails, did you see
8 indications on those e-mails -- and I think that they are
9 before you as an exhibit right now -- Exhibit No. 119.

10 What were the indications on those
11 e-mails from Carol Kennedy to Mr. Democker about her ability
12 to make her monthly obligations?

13 MR. SEARS: Foundation as to which part of
14 Exhibit 119 the witness is being asked to refer to. Multiple
15 e-mails in one exhibit. Different dates.

16 THE COURT: Overruled.

17 THE WITNESS: This is an e-mail that Carol is
18 responding to Mr. Democker, based on e-mails that she had
19 received earlier in the previous couple of days, in which
20 there is a disagreement over the amount of money that they
21 each owe each other at this particular point in time.

22 Mr. Democker had suggested that the
23 amount of money that she had received in the QDRO was of
24 sufficient amount that she owed to him by virtue of their
25 divorce agreement, settlement agreement -- that there was a

1 portion of that money that was due to him. This e-mail and
2 this paperwork that is a part of this exhibit is Carol's
3 reflection or answer to his assertion that there was money
4 that was due to him as a result of this, in which she
5 sends -- has documents prepared indicating what the real
6 value of the QDRO was when she received it, what the
7 offsetting amounts that she felt were due against that, and
8 an indication of how much was left due to Mr. Democker, and a
9 reiteration that the second spousal payment of \$6,000 was
10 already one day late.

11 THE COURT: Can you, for the record, indicate
12 what pages of 119 that you are referring to?

13 THE WITNESS: Yes, sir, I can. Page No. 1 is
14 a copy of the letter from Mr. Democker to Carol indicating
15 that he has money due. There is handwritten notes on that
16 page of Carol's explanation of why that's not true.

17 Page No. 2 is a copy of a document of the
18 401-K Plus Plan that was distributed, and it's an indication
19 of how much was distributed, as opposed to what was believed
20 to have been distributed.

21 BY MR. BUTNER:

22 Q. And when you say the 401-K plan, you are talking
23 about what was ordered to be paid under the terms of the
24 QDRO?

25 A. Yes, sir. The roughly \$186,000.

1 Q. And Mr. Democker indicated that he thought a
2 different amount was payable?

3 A. He believed there was a different amount that was
4 received, correct.

5 Q. What was that amount?

6 A. I believe it was right at 197,000.

7 Q. And Carol was refuting that?

8 A. Carol was sending Page 2 to indicate that the
9 amount that Mr. Democker had sent to her was incorrect, and
10 correcting the amount that she had received.

11 Page No. 3 is another document received
12 from UBS indicating what the distribution was and how much
13 withholding was taken out of that distribution, and what the
14 net amount was that was deposited or given to Carol.

15 Q. Did Carol indicate to Mr. Democker that she didn't
16 have enough money to even pay the taxes from the QDRO?

17 MR. SEARS: Objection. Foundation as to date
18 and time.

19 THE COURT: Sustained.

20 BY MR. BUTNER:

21 Q. In the body of those documents that you have in
22 your hand, Exhibit No. 119, did Carol indicate to
23 Mr. Democker that she didn't even have enough money to pay
24 the taxes on the QDRO?

25 A. I don't believe in this document that she asserts

1 that. Let me look real quick. Not in this document.

2 There were documents earlier that she
3 indicated that. But in this document, it was merely an
4 answer to Mr. Democker about the amount of money that she
5 really received, what the withholding was on it, what the net
6 cash was that she received, and then based on that, a
7 response to the assertion that he was to receive some \$8500,
8 in which she corrects, in her mind or on this piece of paper,
9 what he was to really receive.

10 Q. And what did she say she was to receive from
11 Mr. Democker?

12 A. She indicates that as a result of the QDRO, she
13 owed him \$1900, roughly. That he owed her for payments that
14 were stipulated by the Court to be paid that he had not paid,
15 4,400 and some-odd dollars, which gave a difference of
16 \$2,491.48.

17 She then indicates on it that not only
18 are you not going to get the \$8400 that you are telling me
19 you have coming, but I want the \$2,491 plus the \$6,000 second
20 spousal payment, and I want it today.

21 Q. And the date of this communication?

22 A. On Page 1, the date of the e-mail that was
23 received by Carol was July 1st, 2008. These documents
24 represent her preparation of the response to that.

25 Q. And did you see an e-mail that reflected her

1 response, also?

2 A. No, I have not found an e-mail that reflects her
3 response. Only the documents.

4 Q. Okay. Did you look at e-mails that indicated that
5 this was an ongoing dispute between them?

6 MR. SEARS: Form of the question. Ambiguous
7 as to what is a "dispute."

8 THE COURT: Overruled.

9 THE WITNESS: I have got about 30 documents
10 here, that if you read any one of them, it will give you an
11 indication of the ongoing dispute. I don't know which one
12 you want me to read, but they all are evidence of the
13 disputes that are going on during this period of time about
14 the money.

15 BY MR. BUTNER:

16 Q. Did you look at documents from Mr. Democker
17 indicating that he was having difficulty meeting his
18 financial obligations?

19 MR. SEARS: Foundation as to date and time.

20 THE WITNESS: Yes. There are a number of
21 those and I think --

22 THE COURT: Overruled.

23 MR. BUTNER: Going to get to that, Judge.

24 Q. What are those documents? Do you have some of
25 them before you at this time?

1 A. Again, there is a lot of them here, and I can dig
2 through. The document that comes most to my mind is the
3 e-mail that he sent to Carol saying that he had been
4 borrowing money from his father because he was having
5 difficulty meeting the obligations.

6 THE COURT: Mr. Sears indicated he would like
7 date and reference first before you give the information, so
8 I will strike the last part of that.

9 MR. BUTNER: Need to find that e-mail,
10 Mr. Echols.

11 THE WITNESS: All right. I'm sorry. It is
12 taking longer, but these e-mails are being drafted
13 differently than the originals, and I am having difficulty
14 finding that.

15 MR. SEARS: Your Honor, while Mr. Butner is
16 looking at the exhibits, if I could ask the Court's
17 indulgence.

18 I have a bit of a dental emergency. I am
19 keeping my mouth closed, but I managed to knock a cap off a
20 lower tooth. And the last time I delayed doing that, it cost
21 me a root canal. I have an appointment at noon, here in
22 town, with my dentist. If we could break maybe at 11:45. I
23 think he is just going to put a temporary on there.
24 Mr. Butner will be glad to hear that it will probably limit
25 how much I can speak.

1 THE COURT: We will try and get you released
2 in time.

3 MR. SEARS: Thank you, Your Honor.

4 THE WITNESS: Mr. Butner, I have here an
5 e-mail dated Thursday, the 1st of May, 2008. 19 hours and 48
6 minutes.

7 Carol -- this is a --

8 MR. SEARS: I'm sorry, Your Honor. Is this
9 part of Exhibit 119?

10 MR. BUTNER: I was just going to ask for the
11 exhibit number.

12 THE WITNESS: Exhibit No. 30.

13 MR. BUTNER: 30. Admitted into evidence, Your
14 Honor.

15 MR. SEARS: May I just take a quick peek at
16 it? Thank you.

17 THE COURT: Mr. Butner.

18 BY MR. BUTNER:

19 Q. In regard to that particular exhibit, what
20 information did you obtain from that exhibit?

21 A. This is a similar e-mail to the others, and in it
22 she is sending to Steve -- and I am quoting on from Page 1,
23 the last paragraph -- "I would like the funds that you were
24 court-ordered to pay, which you claimed on your taxes but
25 have never actually paid, transferred to my account

1 immediately. I provided an invoice to you yesterday at the
2 mediation. If you need another copy, let me know. As you
3 know, I have been struggling to make ends meet, unable to
4 afford simple essentials like getting my car serviced while
5 you are holding money that was rightly owed to me. I
6 appreciate your immediate action to rectify this error."

7 That was in response to your question to
8 me about whether she was having difficulty paying her bills.

9 MR. SEARS: Under the rule of completeness, I
10 ask that the witness read Mr. Democker's response which is at
11 the bottom of that same page.

12 THE COURT: Go ahead.

13 THE WITNESS: "Carol, attached is a revised
14 spreadsheet reflecting further concessions I have offered in
15 response to your input regarding my last offer. The changes
16 in the Proposed Division of Assets page of the worksheet are
17 shown in blue. I have been told you wish to see a version of
18 this Assets and Liability spreadsheet that does not show
19 either our respective homes or the mortgages associated with
20 the properties. These have been omitted from this version.
21 I am still waiting from the information you said you would
22 provide regarding two marital assets; your UBS rollover IRA
23 account and your TIAACREF403B account. I am still waiting
24 for invoices on any utility bills you have paid for which you
25 wish to be reimbursed and that you wish me to pay directly."

1 MR. SEARS: Thank you, Your Honor.

2 BY MR. BUTNER:

3 Q. Did Mr. Democker, in those e-mails, indicate that
4 he was borrowing money in order to make his payments?

5 MR. SEARS: Objection. Form of the question,
6 "those e-mails." Which e-mails?

7 THE COURT: Sustained.

8 BY MR. BUTNER:

9 Q. The e-mails that you have reviewed in connection
10 with this case, did Mr. Democker indicate that he was
11 borrowing money to pay his monthly obligations?

12 MR. SEARS: Foundation as to which e-mails and
13 what dates.

14 THE COURT: Overruled.

15 THE WITNESS: Yes, on several occasions.

16 BY MR. BUTNER:

17 Q. How much?

18 A. I think I referred to the one e-mail where he said
19 he had to borrow \$50,000 from his father and he was virtually
20 insolvent.

21 Q. Did he indicate at what rate he was borrowing that
22 money?

23 A. The indication was \$50,000 within the last 90
24 days.

25 MR. SEARS: Foundation as to date.

1 THE COURT: Sustained.

2 BY MR. BUTNER:

3 Q. And when was that?

4 A. That's an e-mail that's dated March 13, 2008, that
5 was sent to Carol by Mr. Democker.

6 Q. As of the date of Carol Kennedy's death -- that's
7 July 2nd, 2008 -- did you review documents to ascertain the
8 financial condition of Mr. Democker as of that date?

9 MR. SEARS: Foundation. Vague. Form of the
10 question.

11 THE COURT: Overruled.

12 THE WITNESS: We reviewed the documents that
13 we had in an attempt to find out what the financial condition
14 was during 2007 and up to the date of the death, July 2nd,
15 2008.

16 BY MR. BUTNER:

17 Q. Tell us what documents you reviewed.

18 A. We reviewed the bank statements for the National
19 Bank account that was Mr. Democker's bank account.

20 We reviewed all of the statements for the
21 four credit cards.

22 Q. Okay.

23 MR. SEARS: Your Honor, may the record reflect
24 that the witness is looking at documents in order to answer
25 this question.

1 THE COURT: It does.

2 THE WITNESS: That would be the Amex card, the
3 UBS Visa card, the Bank of America 5856 card, Bank of America
4 5585 card, and the Chase card. We reviewed all of those
5 documents and the documents that were submitted to the Court
6 by Mr. Democker in an attempt to determine the total amount
7 of funds that were available to the community for each of
8 those periods of time, how much money was spent during that
9 period of time, to ascertain the financial condition and the
10 ability to pay the current debt.

11 BY MR. BUTNER:

12 Q. Did you also review Mr. Democker's Schedule C's
13 from UBS in order to ascertain how much money he had received
14 from UBS during that relevant time period?

15 A. Yes.

16 MR. SEARS: Objection, Your Honor. This is
17 precisely the kind of detailed documentation testimony and
18 disclosure about particular records, particular analysis that
19 has never been disclosed to us that makes it impossible for
20 us to adequately defend in this Chronis hearing. We think
21 the reason the Court set a deadline was to prevent this from
22 happening. We ask that this testimony be precluded.

23 There is no end to what Mr. Echols would
24 be allowed to testify to. And there would be no way that we
25 could possibly have the benefit of any of this analysis. We

1 have four pages from him, and there is no detail in those
2 four pages, as the Court knows from having seen that
3 document.

4 THE COURT: Overruled.

5 MR. BUTNER: For the record, Judge, the
6 Schedule C's were provided in the thirteenth supplement from
7 the State, on May 21st of the year 2009, to the defense.
8 They were obtained under subpoena from UBS.

9 I would present you with Exhibit No. 127.

10 Q. Do you recognize that?

11 A. Yes, sir.

12 Q. What is it?

13 A. Those are documents entitled "Schedule C," and
14 what they are is the record of the production month by month
15 that was given to Mr. Democker that identified the source of
16 his revenue being paid by UBS.

17 Q. Let me also show you what's been marked as Exhibit
18 No. --

19 MR. BUTNER: First of all, I would move for
20 the admission of that exhibit. That was 127, as I
21 understand.

22 MR. SEARS: May I have a couple of questions
23 on voir dire? I may have an objection, Your Honor.

24 THE COURT: You may.

25 MR. SEARS: Thank you.

VOIR DIRE EXAMINATION

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BY MR. SEARS:

Q. Tell me again, Mr. Echols, where you obtained those UBS records?

A. Under subpoena we received those documents from UBS.

Q. And those documents, if I understand your testimony thus far, are the internal UBS documents that show his production month against month, for what period of time?

A. October 2004 through October of 2008.

Q. And you also looked at payroll records from UBS to Mr. Democker, I assume; is that right?

A. No, I don't believe we did.

Q. Okay. Do you have some understanding of how the documents in front of you relate to the actual compensation received by Mr. Democker?

A. Yes, sir, I do.

Q. What is your understanding?

A. My understanding is that production is measured by UBS. That production is then -- there is a factor that is applied against that production -- that production number, based on the level of production that he has. In other words, it is a percentage figure that can go up or down, based on his production.

When you take that -- the total

1 production for the month and you apply that factor to it, it
2 indicates the amount that is earned by Mr. Democker for that
3 particular month, and then that compensation is paid the
4 following month.

5 Q. Are those earnings records within the documents in
6 front of you?

7 A. Earnings records. Not these documents, no.

8 Q. So those documents are just part of the process
9 you just described. Those are the actual production figures,
10 but then in order to determine what Mr. Democker actually
11 earned as a result of his production, you would have to have
12 additional records; is that right?

13 A. We got additional records to confirm that, yes.

14 Q. They are not in front of you?

15 A. Not yet.

16 MR. SEARS: Your Honor, it would appear that
17 those documents are irrelevant. The only issue ever was how
18 much Mr. Democker made, not what UBS did to calculate how
19 much he made. That is all the divorce court ever needed,
20 that is all that was ever required, and that is all that
21 could conceivably be at issue in the Chronis hearing.

22 THE COURT: That objection is overruled. I
23 understand that this is only one element of the ultimate
24 issue, but it is an element of that issue. So I will
25 overrule the objection.

1 127 is admitted.

2 DIRECT EXAMINATION RESUMED

3 BY MR. BUTNER:

4 Q. And in the calendar year of 2007, did you find out
5 how much Mr. Democker was actually paid as compensation by
6 UBS?

7 A. Yes, sir.

8 Q. What document or documents did you review to
9 ascertain that?

10 A. A W-2 form.

11 Q. And how much was he paid?

12 MR. SEARS: May the record reflect that
13 Mr. Echols is again looking through his records.

14 THE COURT: It does.

15 MR. SEARS: If the State has such an exhibit,
16 perhaps now would be the time to offer it. Otherwise, I'm
17 afraid that Mr. Echols would be testifying from something not
18 in evidence.

19 THE WITNESS: He was paid.

20 MR. SEARS: Objection.

21 MR. BUTNER: Mr. Echols --

22 MR. SEARS: Objection pending.

23 BY MR. BUTNER:

24 Q. Mr. Echols, before you go to that, you earlier
25 testified how much he was paid. Do you recall that?

1 A. Yes, sir.

2 MR. SEARS: Asked and answered.

3 THE COURT: Overruled.

4 BY MR. BUTNER:

5 Q. Was it \$526,966?

6 A. \$965.52. Correct.

7 Q. And did you verify that figure by reviewing a W-2
8 form from UBS to Mr. Democker?

9 A. Yes. Yes. UBS sent us a copy of the W-2 form.

10 Q. Is that part of the subpoenaed documents from UBS,
11 also?

12 A. Yes, sir.

13 Q. And in connection with the reviewing the financial
14 condition of Mr. Democker, you indicated that you looked at a
15 bunch of credit card statements; is that correct?

16 A. That's correct.

17 Q. Exhibits number -- let me show you Exhibits
18 No. 128 through Exhibit 132.

19 And these all have Bates numbers on them,
20 a copy provided to Counsel just prior to the hearing, Judge.

21 Do you recognize those documents, going
22 through them one exhibit at a time?

23 A. Yes, sir, I do.

24 Q. What are they?

25 A. They are the credit card statements on each of

1 five credit cards for the period of 2007, inclusive January
2 through December.

3 Q. And where did you get those?

4 A. By subpoena.

5 Q. From the various banks and entities?

6 A. Yes, sir.

7 MR. BUTNER: I would move for the admission of
8 the exhibits that I just enumerated, Judge. I can't remember
9 it now.

10 THE COURT: 128 to 132.

11 MR. SEARS: Voir dire, Your Honor?

12 THE COURT: Yes.

13 VOIR DIRE EXAMINATION

14 BY MR. SEARS:

15 Q. Mr. Echols, do you have any reason to believe that
16 the documents that you have in front of you that you
17 described as credit card statements were not provided to or
18 available to Carol Kennedy's divorce lawyer?

19 A. We received documents from the divorce lawyer.
20 There were some holes in those documents. The subpoena went
21 to fill those holes.

22 So it's a combination of what we might
23 have received and subpoenas for those documents.

24 MR. BUTNER: Judge, I'd note something for the
25 record, and that is, first of all, that we have not been

1 provided with Mr. Fruge's file. An objection, a continuing
2 objection has been in effect concerning his file. So we
3 don't really have all of the records and so forth in
4 Mr. Fruge's file, and can't get it, privilege having been
5 asserted.

6 THE COURT: I understand.

7 MR. SEARS: I can ask the question
8 differently. Thank you.

9 Q. Mr. Echols, do you have any information whatsoever
10 that indicates that Steven Democker, my client, withheld,
11 falsified, or otherwise fraudulently interfered with the
12 ability of his former wife to obtain those records?

13 A. The only answer I can give to that, that would be
14 a matter of fact, would be to suggest to you that a number of
15 e-mails that I have read have suggested that that was true.
16 Whether or not that actually happened, I don't have any
17 factual evidence to indicate it.

18 Q. Let's remember what we are talking about. We are
19 talking about somebody else's credit card bills. We're
20 talking about credit card bills that are maintained by
21 financial institutions; correct?

22 A. Yes, sir.

23 Q. You are not suggesting here that Mr. Democker had
24 the ability to manipulate the internal records of a bank on
25 its own credit card accounts, are you?

1 A. No, I'm suggesting to you that a number of people
2 had indicated that those records were not provided to
3 Mr. Fruge for whatever reason. What that reason is, I don't
4 know.

5 Q. Do you have any information that Mr. Democker
6 somehow interfered with the ability of Mr. Fruge to obtain
7 those records -- Mr. Democker?

8 A. Other than those e-mails, I have nothing to
9 indicate that, no.

10 Q. Now, those records are records of expenditures;
11 correct? Credit card purchases and charges; correct?

12 A. They are records of payments that are made and
13 expenditures that are made, and reflect the beginning and
14 ending balance of those cards on a monthly basis

15 Q. The credit card bills that we all get; correct?

16 A. Correct.

17 Q. Now -- I'm done with my questions, Mr. Echols.

18 MR. SEARS: Your Honor, this is a Chronis
19 hearing. Unless the State is prepared to offer some evidence
20 that there is somehow fraud or financial wrongdoing on the
21 part of Mr. Democker with regard to this evidence, that is
22 somehow in a way that can I not yet see, connected to one or
23 more of the aggravators, then it has no place in this
24 hearing, and the introduction of this evidence and similar
25 hearing is irrelevant and immaterial, not part of this

1 hearing. There is just no indication that these credit card
2 bills have the slightest thing to do with the State's burden
3 of proof on these aggravators under Chronis v Steinle?

4 THE COURT: I guess my issue, Mr. Butner,
5 would be with regard to what the evidence of 2007
6 expenditures or credit card bills would be in connection with
7 the domestic relations matter or revisiting a domestic
8 relations matter or ultimately a homicide in May to July of
9 2008.

10 MR. BUTNER: Judge, it demonstrates that the
11 defendant was living beyond his means, up to and including
12 the time of May and July 2nd of 2008. He was, in essence,
13 upside down, could not meet his obligations. And when
14 additional financial pressure was placed on him by the
15 decedent, just before the date of her death, he responded by
16 killing her.

17 And there is already evidence before the
18 Court that that financial pressure was being exerted by the
19 defendant -- or by the victim, at that time, on the
20 defendant.

21 THE COURT: I don't know that the nature of
22 credit card statements from 2007 is necessarily probative of
23 the condition in Spring or Summer of 2008, though.

24 I will let you proceed down that road a
25 bit, but at this point I am not satisfied that there is the

1 relevancy to 128 through 132.

2 MR. SEARS: Thank you, Your Honor.

3 DIRECT EXAMINATION RESUMED

4 BY MR. BUTNER:

5 Q. Mr. Echols, did you review credit card
6 expenditures up to and including the time of Carol Kennedy's
7 death by Mr. Democker?

8 A. Yes, we did.

9 Q. What were the credit card expenditures that you
10 reviewed?

11 A. Well, we reviewed all of the credit cards that we
12 have discussed -- the five that we have discussed. And the
13 reason we reviewed those was because it was important for us
14 to understand the amount of money that was being spent and
15 the number of times that credit cards had money that were
16 borrowed from one credit card to make another credit card
17 payment.

18 The reason we did that was because we
19 wanted to look at the year of 2007 to be able to determine
20 the total amount of income that was earned versus the amount
21 of money that was spent. By doing that, it would give us
22 some indication as to what the financial pressure on the
23 community was. And then we could compare to 2008, whether or
24 not the life style had changed, the income had changed, or
25 the pressure had changed, up to the date of her death. And

1 that is the reason why we reviewed those.

2 Q. In regard to the year --

3 MR. SEARS: Excuse me, Your Honor. I'm going
4 to object to this continuing line of questioning. This is
5 exactly what we tried to present in our objection to
6 Mr. Echols's testimony. Mr. Echols has come here to testify
7 as a financial fraud expert. Mr. Echols now has told the
8 Court that what he was trying to do was to take the financial
9 information and shoehorn it into a theory that would support
10 the State's allegation that my client killed his former wife.

11 That is clearly not within the scope of
12 his expertise. That is clearly the ultimate conclusion for
13 this Court, ultimately a jury to make, in this case. It is
14 not the kind of expert testimony that this witness under Rule
15 702 should be allowed to offer. He is an accountant. He is
16 an accountant. That is what he does.

17 Determining motivation and why people
18 behave in certain things are ultimate issues to be decided by
19 the trier of fact. He has no credentials that would allow
20 him to offer that opinion.

21 THE COURT: Overruled. I am not saying I am
22 allowing an opinion. He is saying that is what his
23 motivation was.

24 MR. SEARS: Thank you, Your Honor.

25 MR. BUTNER: Thank you.

1 Q. As of July 2nd of the year 2008, were you able to
2 establish whether Mr. Democker was financially meeting his
3 monthly obligations?

4 A. In specific numbers, no, we were not. The only
5 thing we could do was compare the income in related periods
6 to the amount of money that was being spent.

7 Q. In regard to the first months of 2008, did you
8 find evidence as to what Mr. Democker's income was in those
9 months?

10 A. Mr. Democker's production and revenue for the
11 first six months of 2008 compared to the previous year were
12 down approximately 30-percent.

13 Q. Did you look at documents to see if Mr. Democker
14 was having difficulty making his monthly payments?

15 A. Only the e-mails that were being exchanged between
16 them, where he continued to indicate that he was almost
17 insolvent.

18 Q. And did Mr. Democker have, in essence, fixed
19 expenses, as a result of documents that you looked at, going
20 into the months of 2008?

21 A. Mr. Democker provided to the Court, under his
22 financial document that we have here on January 31st of
23 2008 -- provided for the Court the cash expenditures that he
24 had for the year 2007. And we used those documents.

25 Q. And what were his cash expenditures for the year

1 2007?

2 MR. SEARS: Relevance to this Chronis hearing,
3 Your Honor.

4 MR. BUTNER: Judge, if I might, you can look
5 at what he had to spend -- a cash expenditure in 2007, and
6 then you can compare it with production that has been reduced
7 by 30-percent in 2008, and you can make an inference or a
8 conclusion from that. And that is what we are trying to
9 offer to the Court at this point in time.

10 THE COURT: Overrule the objection.

11 THE WITNESS: Ask me that again.

12 BY MR. BUTNER:

13 Q. I believe the question was: What was
14 Mr. Democker's cash expenditure in the year 2007?

15 A. What we did was we took Mr. Democker's W-2 form,
16 which was the amount of money that he was paid by UBS. We
17 subtracted from that W-2 form the amount of money that was
18 paid for Medicare, federal tax, state tax, et cetera, for us
19 to be able to determine what the net cash was that he was
20 able to take home to support the payments.

21 In addition, from that cash we reduced
22 the automatic withholdings from his W-2, which was given to
23 us by UBS, to indicate what the net cash that he had
24 available to him from his employment to meet the needs of the
25 community. We determined that that cash was roughly

1 \$170,000.

2 MR. SEARS: Foundation as to period of time.

3 THE COURT: Overruled. He said 2007.

4 BY MR. BUTNER:

5 Q. This was for the year 2007.

6 A. That was the year 2007.

7 Q. And did you review Mr. Democker's financial
8 circumstances to see what his financial circumstances were in
9 2008?

10 A. No, we did not. We only looked at the portion
11 that said his production was down. So we knew what his fixed
12 expenses were. We knew that his production was down.

13 So we knew approximately how much money
14 he was receiving, given to us by UBS, and we knew what his
15 fixed expenses were.

16 Q. And so how much -- I am just going to divide this
17 in half -- I take it 85,000 for six months in 2007; right?

18 A. That would be correct. Well, it's going to be
19 less than that, because there is a 30-percent reduction.

20 Q. Well, I said 2007, Mr. Echols.

21 A. I'm sorry. You're correct.

22 Q. 85,000 for six months in 2007?

23 A. Correct.

24 Q. And did you look to see what his net cash would
25 be, or figure out what his net cash would be for the first

1 six months in 2008?

2 A. Yes, we estimated it to be 20-percent higher than
3 the cash deficit that he had in 2007.

4 Q. I didn't understand what you just said.

5 A. Let me say it a different way. The net cash
6 available to him in 2007 was a \$170,000.

7 Q. Right.

8 A. After we take the expenses that he indicated on
9 his document that he submitted to the Court and subtract it,
10 he had a net cash shortage of a \$160,000.

11 Q. And this was in 2008?

12 A. That was for the year 2007. He had a net shortage
13 of a \$160,000.

14 Q. And in the year 2008, were you able to calculate a
15 net cash shortage?

16 A. We didn't see a change in the expenses that were
17 being paid, and we know that the revenue was down 30-percent.
18 So that cash shortage would have only been exacerbated.

19 Q. He had 30-percent less production; is that
20 correct?

21 A. Correct.

22 Q. And so he had production -- or compensation of
23 approximately \$50,000 for the first six months of 2008?

24 A. In terms of net cash, yes.

25 Q. And he had expenses of how much for those first

1 six months of 2008?

2 A. I don't have an exact amount for that, but it
3 would have left him with a cash shortage of over a hundred
4 thousand.

5 Q. Did this correlate, if you will, with the e-mails
6 that you saw between Mr. Democker and Carol Kennedy in terms
7 of Mr. Democker's ability to make payments?

8 A. Yes.

9 MR. SEARS: Objection. Foundation. Judge,
10 there's 50,000 e-mails we are talking about. There is
11 specific e-mails that the State wants the witness to talk
12 about. I'd ask that they be referred to specifically. But
13 asking for generalized discussions of 50,000 e-mails is
14 beyond the capacity of this witness, I would propose.

15 THE COURT: Overruled.

16 BY MR. BUTNER:

17 Q. And did you see indications from Carol Kennedy to
18 Mr. Democker that she was placing pressure on Mr. Democker to
19 make payments to her in close proximity to the time of her
20 death?

21 A. Yes. They had talked a number of times about past
22 due payments that were due to the Chase bank. Chase was
23 apparently asking for money, and it hadn't been paid. And
24 she was asking him to make those payments that she said he
25 had agreed to make.

1 Q. Did Carol Kennedy indicate that she was having
2 difficulty in -- first of all, making the house payment at
3 Bridle Path?

4 A. She didn't make those payments. Mr. Democker did.

5 Q. But after the divorce, she was going to be
6 required to; is that correct?

7 A. That's correct.

8 Q. Did she indicate to Mr. Democker that -- as to
9 whether she was able to or not?

10 A. I don't recall her referencing directly that.
11 Only referencing the fact that she had a huge tax liability
12 that she did not have the money to cover. That was the main
13 focus of their disagreement.

14 Q. Did you find out that Carol Kennedy had indicated
15 to Mr. Democker that she was not financially able and did not
16 qualify to take over the mortgage of Bridle Path?

17 MR. SEARS: Foundation as to date and time.

18 THE COURT: Sustained.

19 BY MR. BUTNER:

20 Q. Mr. Echols, did you find an e-mail communication
21 from Carol Kennedy to Mr. Democker concerning her ability to
22 assume the Bridle Path mortgage?

23 A. Yes.

24 Q. Can you put your hands on it?

25 A. I can look.

1 MR. SEARS: Your Honor, perhaps this would be
2 a time for me to make my escape.

3 THE COURT: Perhaps so. Let's take a recess
4 for lunch.

5 Can you be back by 1:15?

6 MR. SEARS: I believe so. The message I got
7 was that my dentist has to pick up his kids at 12:45. A
8 slap-dash solution here, Your Honor.

9 THE COURT: We'll take a recess, to resume at
10 1:15.

11 MR. SEARS: Thank you very much.

12 (Whereupon, a recess was taken at 11:37 a.m.
13 to resume at 1:15 p.m. of the same day.)
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OCTOBER 30, 2009
1:11 P.M.

1
2
3
4 THE COURT: Record reflects the presence of
5 the defendant, his counsel, prosecutor, and Mr. Echols is
6 still on the stand.

7 You may continue.

8 MR. BUTNER: Thank you, Your Honor.

9 DIRECT EXAMINATION RESUMED

10 BY MR. BUTNER:

11 Q. When we stopped, we were talking about Carol
12 Kennedy and her ability to take on the Bridle Path mortgage.

13 Did you find e-mails indicating that
14 Carol Kennedy was making an effort to take on the Bridle Path
15 mortgage or mortgages?

16 A. Yes, we did.

17 Q. And what is the date of the e-mail?

18 A. Let me find it. I have e-mails spread everywhere
19 here.

20 MR. BUTNER: While he is looking for that,
21 Judge, I would ask the Court to take judicial notice of the
22 testimony of Cynthia Wallace that took place in the Simpson
23 hearing on January 15. It's dated January 15 of the year
24 2009.

25 THE COURT: Mr. Sears.

1 MR. SEARS: No objection.

2 THE COURT: The Court will take judicial
3 notice of Cynthia Wallace's testimony from transcripts that,
4 I presume, I have access to.

5 MR. BUTNER: I have extra copies of the
6 transcripts that I inherited in this case. Appears to be
7 filed January 17 of 2009. But just to make sure.

8 THE COURT: Roxanne is the court reporter on
9 it?

10 MR. BUTNER: No. Heidi Anderson.

11 THE COURT: If I need to, I will access that.

12 MR. BUTNER: You don't need this, then, I take
13 it?

14 THE COURT: If you have an extra, I will take
15 an extra.

16 MR. BUTNER: I will give you this one, if
17 there is no objection from Mr. Sears.

18 MR. SEARS: It is testimony of Cynthia
19 Wallace? It is 47 pages?

20 MR. BUTNER: 47 pages.

21 THE COURT: A clean copy?

22 MR. BUTNER: No, I haven't marked on this at
23 all.

24 THE COURT: Thank you.

25

1 BY MR. BUTNER:

2 Q. Did you find that e-mail, Mr. Echols?

3 A. Yes, I did.

4 Q. Date, please?

5 A. Sunday the 1st of June, 2008.

6 MR. SEARS: Exhibit number, Your Honor?

7 THE WITNESS: Exhibit No. 44.

8 THE COURT: Thank you.

9 MR. SEARS: Thank you.

10 BY MR. BUTNER:

11 Q. And does Carol indicate that the bank is not
12 letting her take over the mortgage on Bridle Path?

13 A. That's correct.

14 Q. Does she elaborate?

15 A. Yes, she does.

16 Q. What does she say, please?

17 A. "The \$70,000 home equity line you have succeeded
18 in sticking me with, rendering Bridle Path an unsaleable
19 albatross, was a debt you took out in your sole and separate
20 name, which M&I won't even consider putting into my name. I
21 am unable to cover the barest minimum monthly net once taxes
22 are taken out of my support, and I am unable to sell the
23 place. Working full time I have to borrow money even to stay
24 here, and however long I decide to under the terms of the
25 settlement."

1 Q. In fact, did you find out that Carol had indicated
2 to Mr. Democker that she was going to probably have to walk
3 away from Bridle Path and let it go into foreclosure?

4 A. Yes.

5 MR. SEARS: Foundation as to date and time.

6 THE COURT: Sustained.

7 MR. SEARS: Move to strike the answer.

8 THE COURT: If he answered, it is stricken.

9 MR. BUTNER: All right.

10 Q. Did Carol at some point in time indicate to
11 Mr. Democker she was going to walk away? If you could tell
12 me a time?

13 A. I believe she indicated to her daughters, who told
14 Mr. Democker on the date of the divorce settlement.

15 Q. How did you come by that information?

16 A. That was on a telephone conversation, dated the
17 24th of January of 2009, conversation between Mr. Democker
18 and I believe it was Rene, in which he disclosed that the
19 girls had told him on the date of --

20 MR. SEARS: I'm sorry. This is now, I think,
21 at least two additional layers of hearsay. This is a witness
22 relating a telephone conversation he is not a party to, from
23 another person talking about some other person's
24 conversation. I think we are far past the point of reliable
25 hearsay that should be admitted in this proceeding.

1 THE COURT: I guess I didn't hear the source
2 of the conversation, other than Rene, a statement by Rene.

3 I will sustain that.

4 MR. BUTNER: I will ask a couple of clarifying
5 questions, Judge.

6 Q. You were provided with copies of some
7 conversations between Mr. Democker and various people while
8 he has been in custody; is that correct?

9 A. That's correct.

10 Q. Did you get a copy of a conversation of
11 Mr. Democker speaking with Rene Gerard while he was in jail
12 on January 24th of the year 2009?

13 A. Yes, I did.

14 Q. In that particular conversation, did Mr. Democker
15 indicate that he was aware, because he had been told by his
16 daughters, that Carol Kennedy was going to walk away from the
17 Bridle Path residence and let it go into foreclosure because
18 she couldn't afford to make the payments?

19 MR. SEARS: Your Honor, I object. This really
20 doesn't cure the multiple layer hearsay problem.

21 Furthermore, this is a matter, I think, far beyond the scope
22 of whatever retainer agreement existed between the State and
23 Mr. Echols, far beyond his scope as an expert. It is not
24 relevant. And the transcript, I am guessing, of that would
25 cover many more subjects and have other context. So

1 Mr. Echols' report about something he read, without putting a
2 document in front of us, on its own is the basis for this
3 objection. There is no way of knowing the context in which
4 that conversation was made. Mr. Echols is relaying his
5 impression of that conversation.

6 It is just not relevant.

7 THE COURT: Overruled.

8 MR. BUTNER: Thank you.

9 Q. In regard to the 2007 income tax return, did you
10 read the testimony of Cynthia Wallace as to how she came into
11 possession of this income tax return? This is Exhibit 120
12 for the record.

13 A. Yes.

14 Q. And Cynthia Wallace basically testified to what
15 about the income return?

16 MR. SEARS: Same objection, Your Honor. We
17 have now a transcript of her testimony. It speaks for
18 itself. It is really improper for this witness to summarize
19 some other witness' sworn testimony that is before the Court.

20 THE COURT: Sustained.

21 MR. BUTNER: Okay.

22 Q. Drawing the Court's attention to Page 4, Line
23 22 -- Line 21 of the testimony of Cynthia Wallace, and
24 proceeding from that point on through Page 5 --

25 MR. SEARS: Sorry. Line and page again,

1 Mr. Butner.

2 THE COURT: 4, 21.

3 MR. BUTNER: Page 4, Line 21.

4 Actually, I should probably include Line
5 18, beginning, "Okay. Do you have occasion to meet Virginia
6 Carol Kennedy?"

7 MR. SEARS: Page 21?

8 THE COURT: Page 4.

9 MR. BUTNER: Page 4, John, Line 18.

10 MR. SEARS: Thank you.

11 MR. BUTNER: And proceeding through Page 8,
12 Line 11.

13 Judge, in the interest of expediency, I
14 am simply asking the witness to kind of summarize his
15 understanding of that testimony, so that we can move along.

16 MR. SEARS: I would object, Your Honor. It is
17 not what a witness should be doing.

18 THE COURT: I have read the pages that you
19 referenced. Go on to a question.

20 MR. BUTNER: Thank you.

21 Q. Is this a copy of the income tax return that was
22 obtained from Cynthia Wallace that was provided to her by
23 Carol Kennedy on April the 10th of the year 2008?

24 A. Yes. That's my understanding from the records we
25 obtained from Wallace, yes.

1 MR. BUTNER: I would offer this exhibit at
2 this time, Judge, with that foundation, Exhibit No. 120.

3 MR. SEARS: That doesn't address the best
4 evidence issue, or establish at all that this is a return
5 that was filed with the Internal Revenue Service.

6 THE COURT: Is this the same as Exhibit No. 78
7 in the previous proceeding?

8 MR. BUTNER: I don't know, Judge, because I
9 didn't get a copy of the exhibits with my transcript. I
10 believe it is, but I haven't got that at hand.

11 THE COURT: I will overrule the objection.
12 120 is admitted.

13 BY MR. BUTNER:

14 Q. And speaking about Exhibit 120, did you find out
15 what -- first of all, was Carol planning on reporting
16 Mr. Democker to the IRS as a result of that income tax
17 return?

18 A. Yes.

19 Q. And was she upset with Mr. Raider, the accountant
20 that filed the income tax return, also?

21 A. Yes.

22 Q. Was she planning on reporting him to the
23 Accountancy Board?

24 A. Yes.

25 Q. Did she also -- was she also upset with -- what

1 aspect, so to speak, of the return was she upset with?

2 A. There were two aspects. She thought the return
3 was prepared incorrectly on its basis. And secondly, she was
4 upset about the figures that were being used to classify
5 expenses as alimony to which she was going to have to report
6 as income.

7 Q. In fact, had she gone to Cynthia Wallace to file a
8 tax return that had figures substantially less for her
9 alimony?

10 A. Yes.

11 Q. Let me show you what has been marked as Exhibit
12 No. 126.

13 Do you recognize this particular
14 document?

15 A. Yes, I do.

16 Q. What is it?

17 A. This was a document that was presented to us out
18 of Carol's records, and I believe Cynthia Wallace also had a
19 copy of this record, in which she was attempting to correct
20 the figures that Mr. Democker had given her to be used as
21 alimony on his return and reportable by her.

22 MR. BUTNER: And I would move for the
23 admission of Exhibit number -- I think 126 is what I said.

24 THE COURT: 126.

25 MR. SEARS: May I first look at the document,

1 and I believe I have questions on voir dire, Your Honor.

2 THE COURT: You may.

3 MR. SEARS: Thank you.

4 VOIR DIRE EXAMINATION

5 BY MR. SEARS:

6 Q. Mr. Echols, 126 for identification contains some
7 handwriting on it, in addition to some typed material; is
8 that correct?

9 A. That's correct.

10 Q. Do you know whose handwriting appears on that
11 document?

12 A. No, I don't.

13 Q. It would appear that the handwriting perhaps is
14 from more than one person.

15 A. I don't know that.

16 Q. Does the handwriting at the bottom of the page
17 appear to be different handwriting to you, as an untrained
18 person, than the handwriting immediately above it?

19 A. Some of it is cursive and some in figures. Yes,
20 it is different.

21 Q. Do you know when this document was prepared?

22 A. Approximately.

23 Q. Tell me when you think it was prepared.

24 A. It was prepared during the negotiations of
25 preparing the tax return between about the 25th of February

1 and the 5th of May -- March of 2008.

2 Q. Do you have any evidence today that Steve Democker
3 ever received a copy of this document?

4 A. My recollection is that we have a duplicate of
5 this in Anna Young's records.

6 Q. Do you know that for a fact?

7 A. I don't for a fact sitting here, but I am pretty
8 sure it is.

9 Q. Would it have all the writing on it?

10 A. Yes.

11 Q. If I told you that the bottom here, Carol Kennedy
12 and these dates, was actually put on there by Cynthia
13 Wallace, would you have any reason to dispute that?

14 A. No.

15 Q. In fact, Cynthia Wallace -- one of the dates on
16 there is June 25th at 4:30. That was the date that Carol
17 Kennedy had an appointment with Cynthia Wallace; right?

18 A. That's correct.

19 Q. That was after the divorce; wasn't it?

20 A. That's correct.

21 Q. There would be no reason for that document to have
22 that writing on it to appear in Anna Young's file because the
23 divorce was concluded; correct?

24 A. No.

25 Q. No, there would be no reason for it to be there?

1 A. No. You can't make that connection. The fact
2 that she put an appointment date on this doesn't mean that it
3 has relation to the document at all.

4 Q. I asked you whether or not that document with all
5 that writing on it had been given to Steve Democker, and I
6 thought you told me you were reasonably certain that document
7 was in Anna Young's file.

8 A. Yes.

9 Q. I am telling you that document has Cynthia
10 Wallace's handwriting on it with a date nearly a month after
11 the divorce on which Anna Young was representing Mr. Democker
12 was concluded.

13 A. Correct.

14 Q. Are you still saying that that document with all
15 that writing, including those notes from Cynthia Wallace, was
16 in Anna Young's file?

17 A. I believe it was.

18 MR. SEARS: Foundation. That is impossible,
19 Your Honor.

20 THE COURT: Sustained.

21 DIRECT EXAMINATION RESUMED

22 BY MR. BUTNER:

23 Q. Let me show you what has been marked as Exhibit
24 No. 125.

25 Do you recognize that particular

1 document?

2 A. Yes, sir I do.

3 Q. What is it?

4 THE COURT: 125 is in evidence.

5 MR. BUTNER: It has been admitted?

6 THE COURT: Yes. That is what I am showing.

7 Does the clerk show the same?

8 THE CLERK: Yes.

9 MR. BUTNER: Good. Let me see it for a
10 moment. It isn't marked on the back, Judge, so I couldn't
11 tell for sure.

12 THE COURT: I am not sure it made it back to
13 the clerk.

14 MR. BUTNER: It probably hasn't. Thank you.

15 Q. This purports to be a schedule of 2007 support
16 payments to Carol under temporary orders; is that correct?

17 A. Correct.

18 Q. And at the top there is a little handwritten note,
19 "these are the revised numbers Steve gave Doug to calculate
20 from"; is that correct?

21 A. Correct.

22 Q. You were provided with a copy of that document?

23 A. Yes.

24 Q. Did you correlate that with any other documents
25 that you viewed that are now in evidence?

1 A. Well, this is about the second or third generation
2 of the same document. They began discussing what was going
3 to be calculated as alimony. The first document was sent.
4 It was sent back. There were corrections made. A second
5 document came.

6 And I don't know how many documents
7 ultimately there were, except that this was the final
8 document that was used to prepare the tax return.

9 Q. And you saw that precise amount claimed by
10 Mr. Democker on the income tax return that Carol Kennedy
11 believed he had filed as spousal maintenance; is that
12 correct?

13 A. Exactly.

14 Q. Now, did you go through that schedule of amounts
15 there on that document?

16 A. Yes.

17 Q. And compare them with things that Mr. Democker was
18 ordered to pay as spousal maintenance?

19 A. Yes.

20 Q. Did it comport with things he was ordered to pay
21 as spousal maintenance?

22 A. No.

23 Q. In what fashion did it not?

24 A. There were items on here in which she was being
25 charged as alimony, the BMW lease for Mr. Democker.

1 Q. His BMW lease payment?

2 A. Correct.

3 Q. He charged it to her as alimony?

4 A. Correct.

5 There were a number of items. I believe
6 the Flame Propane, the APS bill. There were a number of
7 bills on here that Carol indicated to Mr. Democker that he
8 did not pay those bills, she had paid them, but they were
9 instead listed on this as alimony to her.

10 Q. He claimed all of those things on his income tax
11 return as alimony?

12 A. Correct.

13 Q. Approximately how much in alimony did Mr. Democker
14 actually pay to Carol in accordance with the court order?

15 A. The only determination that I --

16 MR. SEARS: I have several objections here.

17 It is pretty clear that Mr. Echols is not
18 an attorney. This question asked Mr. Echols to interpret not
19 just questions of tax law, but also to interrelate his
20 forensic examination of records to legal documents and draw
21 legal conclusions in this matter. That is clearly beyond the
22 scope of his expertise under Rule 702, and he should not be
23 permitted to make those ultimate conclusions.

24 He can talk, I think, about examining
25 bank records and summarizing records, but these questions

1 begin to ask him for interpretations beyond the scope of his
2 stated expertise.

3 THE COURT: Mr. Butner.

4 MR. BUTNER: Judge, I think that is incorrect.
5 His stated expertise is as a fraud examiner. He is simply
6 looking at the financial documents to see if there is actual
7 support for those documents, evidencing payments in
8 accordance with a court order. Lay people are expected to
9 honor those court orders.

10 Mr. Echols looks at the court order and
11 sees if the payments are in accordance with the court order
12 or not. It is that simple.

13 MR. SEARS: Your Honor, may I be heard?

14 THE COURT: Yes.

15 MR. SEARS: Thank you.

16 The issue here is not relitigating the
17 divorce. The issue here is whether proof exists to show
18 probable cause for one or more of the alleged aggravators.

19 Throughout the course of this proceeding,
20 the State has alleged, among other things, and Mr. Echols now
21 has assigned onto this argument, that the tax position
22 Mr. Democker took with respect to the alimony deduction, on
23 the advice of his accountant, constitutes fraud. And that,
24 furthermore, Carol Kennedy communicated a clear unequivocal
25 threat to Steve that she was going to do something about that

1 fraud, and that, in turn, to prevent her from doing that,
2 Mr. Democker killed her. That is all that is before the
3 Court here today.

4 So, to discuss on the record whether he
5 was paying the proper amount of alimony, whether the
6 deduction was correct, none of that is relevant to any of the
7 aggravators, which are the decisions the Court is going to be
8 asked to make in this case.

9 The question is not whether there
10 actually was fraud, but whether or not Mr. Democker believed
11 he had done something wrong, and that Carol Kennedy had
12 communicated that to him, and that in fear of some
13 retaliation for that, he killed her.

14 So, going into this discussion of whether
15 he should have been or should not have been given credit for
16 paying half of the Flame Propane bill will never get us to
17 those issues. The testimony is irrelevant. It is also brand
18 new. This is an opinion that has never been disclosed from
19 this witness.

20 I think the State is just sort of
21 presuming that if they can show in this case that
22 Mr. Democker took a tax position that they disagree with,
23 that that somehow constitutes evidence to support one or more
24 of the aggravators in this case. That just can't be. It
25 just can't be.

1 THE COURT: Read back the question, please.
2 (Whereupon, the relevant portion
3 of the record was read back.)

4 THE COURT: Overruled. You may answer.

5 THE WITNESS: The temporary order stated that
6 Mr. Democker was responsible for paying, and I don't have
7 that in front of me, so I don't know exactly what it was --

8 MR. SEARS: Your Honor, may the witness be
9 instructed to answer the question.

10 THE COURT: I was about to, Mr. Sears.

11 If you would just answer the question as
12 posed, please, if you can.

13 THE WITNESS: I can. I need to add it up,
14 your Honnor.

15 THE COURT: Okay.

16 THE WITNESS: I would say in the ball park of
17 \$40,000.

18 BY MR. BUTNER:

19 Q. Approximately \$40,000?

20 A. Correct.

21 Q. And yet, he claimed on his income tax return, at
22 least of the belief of Carol Kennedy, 98 thousand-some-odd
23 dollars?

24 A. That's correct.

25 Q. Before we took the lunch break, we had some

1 discussion about e-mails in this case. And you had an
2 opportunity to review the e-mails that were admitted into
3 evidence; is that correct?

4 A. Correct.

5 Q. Was there an on-going dispute between Carol
6 Kennedy and Steven Democker up to the date of her death
7 concerning the divorce settlement?

8 A. Yes.

9 Q. And was Carol Kennedy of the belief that she had
10 been cheated by Steven Democker in that divorce resolution?

11 MR. SEARS: Form of the question. He couldn't
12 possibly know what she believed.

13 THE COURT: Sustained.

14 BY MR. BUTNER:

15 Q. Did you find an e-mail or e-mails where Carol
16 Kennedy expressed her opinion about what happened in the
17 divorce settlement?

18 MR. SEARS: I would ask for date and time as
19 to each such e-mail.

20 THE COURT: I will overrule that. The
21 evidence, however, has been admitted. I indicated I will go
22 over those exhibits. I think it is cumulative.

23 BY MR. BUTNER:

24 Q. You did find such e-mails?

25 A. There is a lot of e-mails. They had an on-going

1 discussion about the Chase bank account and who was paying
2 that. There was an on-going discussion about whether or not
3 she might want to go back to court, an argument over the
4 issues of what was considered alimony and what wasn't
5 considered alimony. There were on-going discussions about
6 whether or not she was go to be able to take care of the
7 Bridle Path house.

8 And then there were just constant e-mails
9 back and forth about the disagreements they had about who had
10 money, and who owed who money, and who was going to pay for
11 what.

12 Q. Did you find a specific e-mail where Mr. Democker
13 indicated his financial condition?

14 A. Yes. On an e-mail dated Saturday, June the 14th
15 of 2008, he responded to Carol --

16 MR. SEARS: Exhibit, Your Honor?

17 THE COURT: There is a number on the back.

18 MR. BUTNER: The back, Mr. Echols.

19 THE WITNESS: Sorry. 57.

20 THE COURT: Thank you.

21 MR. SEARS: Thank you, Your Honor.

22 THE WITNESS: They were having a discussion
23 about a lot of these issues. And he responded, "how does
24 this solve anything, Carol? You are going to lose on this
25 point. Can't you just acknowledge how well you have done

1 here and be appropriately relieved? Keeping at this fight
2 will hurt you with people with whom you need to heal, and
3 whom you will well depend for their good will. I will not be
4 pushed any further, Carol. You have extracted all you will
5 extract from me. I am in such incredibly worse condition
6 than you are, and will be for many years to come. You get to
7 start clean, while I dig out of this staggering hole, while I
8 am trying to pay out \$400,000 in after tax dollars to send
9 our girls to college.

10 "My income has dropped almost in half.
11 My practice is in pieces. And you got a settlement based on
12 what is likely to be the biggest year of my career, though
13 you want me to pay the Chase card again, when I have already
14 given you enough in the last minute concessions to pay it off
15 several times over."

16 Q. That is June 14, 2008?

17 A. Yes, sir.

18 Q. Did you find an e-mail that indicated that Carol
19 Kennedy had conveyed directly to Mr. Democker the notes and
20 so forth that she had made on his e-mails of July 1st?

21 A. Yes.

22 Q. And both of these are July 1st at 11:02 p.m. and
23 11:15 p.m.?

24 And I am, for the record, referring to
25 Exhibit 119.

1 A. Yes.

2 Q. Is that -- let me see that particular exhibit, if
3 you will.

4 A. I think there is three of them here.

5 Q. Let me just note the exhibit numbers.

6 A. Okay.

7 Q. So you are referring then to exhibits No. 64, 65
8 and 63?

9 A. Correct.

10 Q. Okay. What is the date of Exhibit 63?

11 A. Tuesday, 1st of July, 2008, 22.28 hours.

12 Q. And what does Carol Kennedy say in that e-mail?

13 MR. SEARS: Speaks for itself, Your Honor.

14 May I look at the exhibit?

15 THE COURT: You may and it does. Sustained.

16 MR. SEARS: Thank you, Your Honor.

17 BY MR. BUTNER:

18 Q. Referring to Exhibit 63, 64 and 65, do those
19 e-mails reiterate exactly the same language found on Exhibit
20 No. 119? And I quote, "again, your assertions here are
21 incorrect. It is not that amount of money, and it was not
22 put into my bank account on that date. Please refer to
23 attached documents for accurate information and numbers, et
24 cetera."

25 A. That's correct.

1 Q. Those specific words were used; is that correct?

2 A. That's correct.

3 Q. Do those e-mails convey to Mr. Democker that, in
4 fact, he owes her \$8,491 instead of her owing him any money?

5 A. That's correct.

6 Q. And what is the last date and time of those
7 e-mails; 63, 4 and 5?

8 A. The 2nd of July, 2008, at 18.28 hours. And the
9 second one is 2nd, July, 2008, 18.19 hours.

10 Q. So, at 6:28 in the evening is the last of those
11 e-mails on July 2nd, the date of her death?

12 A. That's correct.

13 Q. Where she is telling him that he owes her money,
14 not the other way around?

15 A. That's correct.

16 Q. Backing up to clarify something. Remember we were
17 talking about the Schedule "C"?

18 A. Yes, sir.

19 Q. And do you have that before you there someplace?
20 Exhibit No. 127.

21 I think this has been admitted.

22 THE COURT: It has.

23 MR. BUTNER: Thank you, Your Honor.

24 Q. Referring to Exhibit No. 127, those were obtained
25 from UBS; is that correct?

1 A. Yes, sir.

2 Q. And they went all the way through from sometime in
3 2004 to October of 2008, as I understand it?

4 A. That's correct.

5 Q. Basically, they show Mr. Democker's production at
6 UBS; is that right?

7 A. Yes. It is monthly statements that show not only
8 the production, but the compensation that is paid for those
9 particular months.

10 Q. That was my question to you. Do they also show
11 how much he was paid in each of the months set forth in the
12 Schedule "C"?

13 A. Yes.

14 Q. As his compensation?

15 A. Correct.

16 Q. So, that is a percentage of his production, so to
17 speak; is that right?

18 A. That's correct.

19 Q. And beginning in January of 2008, did
20 Mr. Democker's compensation that he was being paid by UBS
21 drop from his previous year of 2007?

22 A. Yes.

23 Q. And by what percentage was that drop?

24 A. Production drop was 30-percent, approximately
25 30-percent.

1 Q. And what was the compensation drop?

2 A. The comparison that we made was between January to
3 June of 2007, and January to June of 2008.

4 In January to June, 2007, he received
5 compensation of approximately 257,000. In this same period
6 for 2008, it dropped down to 157,000. So a \$100,000 drop.

7 Q. And you had analyzed how Mr. Democker was doing in
8 terms of meeting his expenses for the year 2007; is that
9 correct?

10 A. That's correct.

11 Q. And if I understood your earlier testimony, did he
12 finish in the red, so to speak?

13 A. Taking those expenses that he had documented and
14 applying them against the income that was reported by UBS, at
15 the end of the year he would have had approximately \$160,000
16 deficit cash, using only as a source the income from UBS.

17 Q. And did you see evidence that Mr. Democker was
18 trying to get money from multiple sources, in addition to his
19 compensation from UBS, during the year 2008?

20 A. Yes.

21 Q. Where else did Mr. Democker get money from,
22 besides his compensation from UBS?

23 A. He made a premature withdrawal from his IRA of
24 89,000.

25 MR. SEARS: Your Honor, again, I would like

1 the record to reflect that in answering that question
2 Mr. Echols reached over and looked at a document.

3 MR. BUTNER: I would like the record to
4 reflect that Mr. Echols reached over and looked at a 2007
5 income tax return, the one that Carol Kennedy was of the
6 belief Mr. Democker had filed. Exhibit 120.

7 MR. SEARS: I was not done, Your Honor.

8 We have asked repeatedly in writing from
9 the County Attorney through the course of this case, all of
10 the materials provided to Mr. Echols that he was beginning to
11 use. And we received from Mr. -- his predecessor,
12 communication saying that there weren't any. Mr. Echols has
13 brought at least two 3-ring notebooks here today full of
14 documents which he has looked at.

15 I would ask the Court to direct the State
16 to immediately disclose, at the conclusion of this hearing,
17 all of the materials that Mr. Echols has with him, and any
18 other materials that he had; any reports, memoranda that he
19 has generated, any communications between the County
20 Attorney's office and Mr. Echols. These are all discoverable
21 under Rule 15. They were all matters which we have
22 repeatedly asked the State to provide, and have been told did
23 not exist. We know now, today, of course they do.

24 MR. BUTNER: Judge, if I might respond to
25 that.

1 THE COURT: If you wish.

2 MR. BUTNER: Thank you.

3 Mr. Echols is not relying upon anything
4 that wasn't provided to the defense in discovery prior to the
5 cutoff date on discovery. I provided voluminous documents to
6 the defense, and Mr. Echols is looking at those.

7 Mr. Sears doesn't like it, I guess, but
8 those are the documents which he has prepared his opinions
9 based upon.

10 THE COURT: I don't have any problem with his
11 basing his opinions on those, and I think that that is
12 naturally what he would base his opinions on.

13 I think what Mr. Sears is asking for is
14 to identify the items within the discovery that has already
15 been made, upon which he is relying, presuming that the
16 answer is something less than the total hundred percent of
17 what has been disclosed.

18 Maybe he looked at the hundred percent,
19 and maybe that is your answer.

20 MR. BUTNER: It certainly isn't, Judge. He
21 hasn't looked at everything that has been disclosed to the
22 defense in this case.

23 THE COURT: I imagine.

24 MR. BUTNER: But we have got Bates numbers
25 that go along with all of our exhibits in this case, with the

1 possible exception -- I was just looking at that 2007 income
2 tax return, but I think we can point to exactly when that was
3 disclosed.

4 THE COURT: Mr. Sears.

5 MR. BUTNER: That came from Anna Young's
6 files. Box 4-A from Anna Young, as I understand it.

7 THE COURT: Mr. Sears.

8 MR. SEARS: For example, we know from other
9 pieces of this litigation, that the State was continuing to
10 send subpoenas to UBS, even after the discovery cutoff. We
11 don't know whether all of the materials received from UBS
12 have been disclosed.

13 For example, the State has disclosed
14 certain materials, and they will send us something and say
15 this comes from UBS. I don't need another copy of what I
16 already have. We don't need to kill any more trees in
17 connection with this. But an index of the materials that
18 Mr. Echols had would be important to us, and we are entitled
19 to it, and we have been told that there wasn't one. And now
20 I think it is more than appropriate for us to have that.

21 THE COURT: I presume that there may be such
22 an index of whatever materials have been provided in some
23 form or another.

24 MR. BUTNER: I think Mr. Echols can sort of
25 describe an index of those materials.

1 THE WITNESS: Let me describe what I have in
2 these books.

3 MR. BUTNER: Would that be sufficient, Judge?
4 That is what he's relied upon.

5 THE COURT: Mr. Sears, is that what you are
6 looking for but in writing?

7 MR. SEARS: I think that would be easier, if
8 it wouldn't burden this hearing.

9 THE COURT: I will simply direct that as soon
10 as possible at the conclusion of today, Mr. Echols provide a
11 listing of, if you would, please, of the materials upon which
12 his opinions relied that he has accessed as part of giving
13 his testimony.

14 MR. BUTNER: Okay.

15 MR. SEARS: In that regard, I heard Mr. Echols
16 say, I believe earlier today, that he had looked at all of
17 the e-mails in this case. And I am going to take a wild
18 guess that is probably not true.

19 If he were provided e-mails in some other
20 form, either a CD of selected e-mails or hard copies, or if I
21 am wrong and he sat there and read every single e-mail on all
22 of the computers in evidence in this case, I would just like
23 to know that. But if he was only given selected e-mails, I
24 would like to know which ones.

25 THE COURT: I note that's what the request is.

1 Let's get back to the hearing.

2 MR. SEARS: Thank you.

3 MR. BUTNER: Thank you.

4 Q. Where were we? Mr. Echols, I believe I asked you
5 a question as to whether Mr. Democker was obtaining income
6 from other sources besides his UBS compensation evidenced by
7 the Schedule C's?

8 A. Yes.

9 Q. Do you recall that question?

10 A. Yes. And I believe I said that one of the sources
11 of covering that shortage came from the premature withdrawal
12 of the IRA, \$89,000 in 2007. Additionally, there were other
13 assets of the community that were used to cover that
14 shortfall in the form of income tax refunds from the previous
15 year, withdrawals from credit cards --

16 THE COURT: When you say previous year, from
17 '07?

18 THE WITNESS: Sorry. From '06, that he would
19 have received in '07.

20 THE COURT: Thank you.

21 THE WITNESS: As well as cash advances from
22 credit cards, which would have increased the liability to the
23 community, to cover cash shortfalls.

24 BY MR. BUTNER:

25 Q. Did he do -- for example, let's talk about the

1 premature withdrawal of the IRA. Was this an IRA that was at
2 UBS?

3 A. Yes, sir.

4 Q. Did he withdraw that IRA after the entry of the
5 preliminary injunction in the divorce decree?

6 A. I believe so, yes.

7 Q. Did he distribute the proceeds of that IRA to
8 Carol Kennedy?

9 A. No.

10 Q. What did he do with that IRA?

11 A. He used it to cover community debt and to take
12 care of the living responsibility for his family.

13 Q. And did you see evidence that, in fact, the
14 schedule of payments that Mr. Democker claimed were spousal
15 maintenance under Exhibit No. 125, that those payments were
16 being made from the proceeds of the premature withdrawal of
17 his IRA?

18 MR. SEARS: Relevance. It is immaterial where
19 the money came from.

20 THE COURT: Sustained.

21 BY MR. BUTNER:

22 Q. Were there other -- you said he was getting cash
23 advances. He got the premature withdrawal of the IRA. Were
24 there other places where he obtained income, to your
25 knowledge?

1 MR. SEARS: Foundation as to time.

2 THE COURT: Overruled.

3 THE WITNESS: He obviously had to cover the
4 shortfall. And, yes, there were other sources. We have not
5 completed our investigation of that part.

6 BY MR. BUTNER:

7 Q. So you are not aware of any other sources as of
8 this date?

9 A. No, sir.

10 Q. And then, of course, he was receiving loans?

11 A. That's correct.

12 Q. He already testified --

13 MR. SEARS: That misstates the evidence. It
14 was suggested that he borrowed money from his father, not
15 loans plural.

16 THE COURT: Sustained.

17 BY MR. BUTNER:

18 Q. Did he receive a loan or multiple loans, to your
19 knowledge, sir, from his father?

20 A. The e-mail stated that he had been borrowing
21 \$20,000 a month. The second e-mail stated it was a total of
22 \$50,000 within 90 days.

23 Q. This was an e-mail that he sent to Carol Kennedy;
24 is that correct?

25 A. Correct.

1 Q. Describing his dire financial circumstances?

2 A. Correct.

3 MR. SEARS: Objection to characterization.
4 Argumentative.

5 THE COURT: Sustained.

6 BY MR. BUTNER:

7 Q. Did you make a calculation, Mr. Echols, then, as
8 of the date of Carol Kennedy's death, as to how deep in debt
9 Mr. Democker was?

10 A. No. I don't believe we made a calculation. We
11 made an educated judgment based on what we have been able to
12 do so far. We have got more work to do.

13 But we knew that within the first six
14 months of 2008, he had made \$100,000 less than he had the
15 previous year. And in the previous year he had \$160,000 cash
16 shortfall. Because we know that the basic expenses that were
17 paid by Mr. Democker to support the community estate didn't
18 change, we would make the summation that he was desperately
19 short of cash.

20 Q. And in that situation, Carol Kennedy was making
21 demands upon him to give her money?

22 A. Correct.

23 MR. BUTNER: While he is reviewing that, I
24 will ask you a couple more questions.

25 MR. SEARS: Could we hold up the question

1 until I finish looking at these exhibits.

2 MR. BUTNER: Fine, I will.

3 MR. SEARS: Thank you, Your Honor.

4 I am done. Thank you, Your Honor.

5 BY MR. BUTNER:

6 Q. Let me show you what was marked as Exhibit 136 and
7 137.

8 Do you recognize those?

9 A. Yes, I do.

10 Q. What are they?

11 A. The cover sheet is an indication that it
12 reflects --

13 Q. Don't tell me what the document says, please.
14 Don't testify from the document, but rather please look at
15 the documents, Exhibit 136 and 137, and do you recognize them
16 first of all?

17 A. I recognize what they are, yes.

18 Q. In regard to Exhibit 136, is that a document that
19 you were provided for your examination as part of your
20 financial examination in this case?

21 A. I have not seen these documents. I have seen the
22 cover page.

23 Q. You have only seen the cover page for all of the
24 documents; is that correct?

25 A. That's correct.

1 Q. You are referring to which exhibit right now,
2 please?

3 A. 136 and 137.

4 Q. Okay. In regard to the cover page of Exhibit 136,
5 what is it?

6 A. Harvard life insurance policy for \$500,000. Looks
7 like part of the application.

8 Q. And for what person is it?

9 A. The insured is Carol V. Kennedy.

10 Q. And the beneficiary is?

11 A. Steven C. Democker.

12 Q. And in regard to Exhibit 137, the cover sheet on
13 that document?

14 A. Same type of application for \$250,000 policy.

15 Q. And were you provided information that, in fact,
16 those two life insurance policies were in effect at the time
17 of Carol Kennedy's death?

18 A. Yes.

19 Q. And the beneficiary on each of them is
20 Mr. Democker; is that correct?

21 A. That's correct.

22 MR. BUTNER: I would move for the admission of
23 Exhibit 136 and 137.

24 MR. SEARS: Your Honor, both of those
25 documents, now that I have had a chance to look at them,

1 contain many, many more pages; correspondence, copies of
2 other documents. This witness can't lay a foundation for
3 anything besides the first page of those documents. And I
4 would object to the inclusion of anything in 136 or 137 that
5 the witness has never seen or knows nothing about.

6 THE COURT: But you have no objection to the
7 front page being received?

8 MR. SEARS: No.

9 THE COURT: The front pages only of 136 and
10 137 are admitted.

11 BY MR. BUTNER:

12 Q. And under the terms of the divorce decree in the
13 divorce of Steven Democker and Carol Kennedy, was
14 Mr. Democker ordered to make spousal maintenance payments?

15 A. Yes.

16 Q. And for how long a period of time?

17 A. Eight years.

18 Q. At what rate?

19 A. \$6,000 per month.

20 Q. And had he made any of those payments yet as of
21 the date of her death?

22 A. Yes. I understand the first payment in June of
23 2008 was made.

24 Q. In fact, that was part of the dispute on or about
25 July 2nd is the payment of the second payment, and who owed

1 whom to who; is that correct?

2 A. That's correct.

3 Q. So did you total those payments over the period
4 that Mr. Democker was ordered to pay?

5 A. Eight years at 6,000 would be \$576,000.

6 Q. So, as a result of the death of Virginia Carol
7 Kennedy, did Mr. Democker avoid the payment of sums of money?

8 A. Yes.

9 Q. Would you describe for us the sums of money that
10 he avoided payment of?

11 A. The alimony of 576,000, plus whatever Carol's
12 share was of the deferred compensation that was yet to be
13 vested with UBS.

14 Q. That is the compensation that you were talking
15 about that would vest after a period of time?

16 A. That's correct.

17 Q. I think you called it -- was it a bullet vesting?

18 A. That's correct.

19 Q. When was that scheduled to vest?

20 A. It was to vest after six years of employment and
21 then equally over the next, I believe, five years or four
22 years.

23 Q. Okay. And did Steven Democker make any
24 indications as to whether he was in a position to take over
25 the mortgage at Bridle Path if Carol Kennedy walked away from

1 it, so to speak?

2 MR. SEARS: Foundation as to date, time and
3 source of that information.

4 THE COURT: Sustained.

5 MR. BUTNER: Judge, I only asked a yes or no
6 in that regard.

7 THE COURT: Answer it only yes or no, then.

8 THE WITNESS: Yes.

9 MR. BUTNER: Thank you.

10 Q. On what date or dates did he make such
11 indications?

12 A. Throughout the mediation that took place in the
13 month of May, 2008, there were discussions back and forth as
14 to whether or not she may not be able to afford to stay
15 there. And Mr. Democker had made an indication that he might
16 be willing to take that property under circumstances. Those
17 circumstances, I don't believe, were ever settled. And I
18 don't believe that ever became a part of the agreement.

19 Q. And in being court ordered to make spousal
20 maintenance payments of \$6,000 a month, was Mr. Democker in a
21 financial condition where he could afford to make the
22 mortgage payments on the Bridle Path residence?

23 A. No.

24 Q. Had you checked on Mr. Democker's licenses and
25 certifications to perform his occupation as a financial

1 advisor?

2 MR. SEARS: Objection. Beyond the scope of
3 his expertise. Rule 702. Never been disclosed.

4 THE COURT: Sustained.

5 BY MR. BUTNER:

6 Q. You were aware of what Mr. Democker's occupation
7 was; is that correct?

8 A. Yes.

9 Q. And what was that?

10 A. He was a financial advisor with UBS.

11 Q. And are you aware of the requirements to maintain
12 his position as a financial advisor at UBS?

13 MR. SEARS: Same objection.

14 MR. BUTNER: It is a yes or no, Judge.

15 THE COURT: Overruled for the time being.

16 THE WITNESS: Yes.

17 BY MR. BUTNER:

18 Q. How did you find out about those qualifications?

19 MR. SEARS: Objection, Your Honor. Never been
20 disclosed. Beyond the scope of his expertise. Barred by
21 Rule 702.

22 MR. BUTNER: I don't think it is, Judge.

23 THE COURT: Let me hear what the foundation
24 is. Overruled.

25 THE WITNESS: I heard about those requirements

1 in our interviews with Mr. Thornburrow, Mr. Sturgis Robinson,
2 Mr. Richard Auch, Mr. Wheeler, Twila Graham {all phonetic
3 spellings}.

4 BY MR. BUTNER:

5 Q. And you reviewed all of those interviews; is that
6 correct?

7 A. Yeah. That was discussed with each of them, and I
8 reviewed those, yes.

9 Q. And they provided information as to the licensing
10 requirements to be a financial advisor?

11 A. I don't believe they discussed the financial
12 requirements. I think they indicated what licenses he held.

13 MR. SEARS: Your Honor, may I have a few
14 questions on voir dire? I have an objection to this line
15 that has come to me between answers.

16 THE COURT: Yes.

17 MR. SEARS: Thank you.

18 VOIR DIRE EXAMINATION

19 BY MR. SEARS:

20 Q. For whom did these gentlemen work when you spoke
21 with them? Did any of them work for UBS?

22 A. Yes. Mr. Van Steenhouse {phonetic spelling}.

23 Q. Anyone else?

24 A. Twila Graham.

25 MR. SEARS: Thank you.

1 DIRECT EXAMINATION RESUMED

2 BY MR. BUTNER:

3 Q. And what kind of licenses were held by
4 Mr. Democker?5 MR. SEARS: Foundation, lack of personal
6 knowledge. He's repeating what somebody told him.7 THE COURT: Mr. Butner, are these people alive
8 and still capable of testifying if there is a trial?

9 MR. BUTNER: They are, Judge.

10 THE COURT: Overruled.

11 MR. BUTNER: And their interviews, copies of
12 them, were provided to defense, Judge, in disclosure.13 THE WITNESS: My understanding was he had a
14 Series 6, and then he had two State licenses. I believe they
15 were a Series 60 and 66.

16 BY MR. BUTNER:

17 Q. What do those licenses qualify him to do?

18 A. Sell securities.

19 Q. Are there requirements for financial advisors in
20 terms of their solvency if they are selling securities?21 MR. SEARS: Objection. Calls for yes or no
22 answer. If he goes beyond that, it is beyond his scope of
23 expertise, and he lacks personal knowledge.

24 THE COURT: You may answer yes or no.

25 THE WITNESS: Give me the question again.

1 BY MR. BUTNER:

2 Q. Are there requirements for financial advisors in
3 terms of their solvency to maintain their licenses to sell
4 securities?

5 A. I understand there are, yes.

6 Q. Who provided you that information?

7 A. Again, those same individuals that we talked to.
8 I think there was six of them that we asked.

9 Q. And what are the requirements in terms of
10 somebody's solvency if they are selling securities?

11 MR. SEARS: Objection, Your Honor.

12 These are matters of record. If the
13 State wants to elicit information about what license
14 requirements or getting that information from someone who
15 talked to somebody else about it, in my view, is not the way
16 to do it. The rules and regulations speak for themselves.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: We were told by those
19 individuals that a breach in solvency or ethical
20 requirements, integrity, would cause the loss of a license.

21 BY MR. BUTNER:

22 Q. And with specificity, were you told about the
23 effect that a foreclosure would have on somebody's ability to
24 sell securities?

25 A. We were told that if accounts were in arrears or

1 foreclosure or some type of a financial event would happen
2 that would bring -- impugns somehow his character, that that
3 would all be taken into consideration in the application of
4 whether he could keep a license or work for UBS.

5 MR. SEARS: Your Honor, I have a continuing
6 objection to this series of questions. This is a very
7 serious allegation that raises a very technical question.
8 The question of precisely what events would trigger adverse
9 consequences to any of the licenses, which by the way are not
10 the licenses that this witness described him having, are very
11 particular matters.

12 The record now is Mr. Echols saying what
13 he understands other people to say about those requirements.
14 If the State is going to offer in a Chronis hearing, evidence
15 to try and support a death penalty aggravator, the State
16 needs, in our view, to have their evidence here. They need
17 to have the regulations, and they need to be able to connect
18 the particular regulations to Mr. Democker's licenses, and
19 the conduct that they think they can prove in this case to
20 those matters.

21 The way they are going about it now is
22 going to leave the record essentially full of gossip, full of
23 half truths and misstatements about the law. These
24 regulations have the effect of law in the financial advisor
25 profession. And I think it can't be much more serious than

1 this, Your Honor.

2 THE COURT: I think one of the problems with
3 where I am at this point with regard to the specific
4 requirements is I have a list of six names that I don't know
5 who of those names provided what information.

6 So, to that extent, I will sustain the
7 objection.

8 BY MR. BUTNER:

9 Q. Mr. Echols, did you find evidence that Steven
10 Democker, in these e-mails that you have reviewed, was
11 concerned about losing his ability to function as a financial
12 advisor?

13 MR. SEARS: Foundation as to date and time and
14 specific communication.

15 THE COURT: Yes or no at this point.

16 THE WITNESS: Yes.

17 BY MR. BUTNER:

18 Q. And could you point to that specific information
19 by way of exhibit number?

20 A. Okay. Let me find those.

21 Exhibit 57, conversation between Carol
22 and Mr. Democker, dated Saturday, June 14, 2008, in which
23 they are discussing all of these issues of how the QDRO is
24 going to be split up, the Chase bank, et cetera. And she
25 states partially, "but I will not codependently participate

1 with you in harming me any further. That was enough. If we
2 have to go back to court over this detail, so be it. It's
3 the principle. Right is right. I won't tolerate BS and
4 being cheated anymore, period. I have been cheated out of
5 enough, don't you think?"

6 That answer your question?

7 Q. Not exactly, no, Mr. Echols.

8 Do you have any e-mail evidence from
9 Mr. Democker that he was concerned that he would lose his
10 ability to be a securities broker?

11 MR. SEARS: Your Honor, I have an objection to
12 this question that goes to disclosure. All we have ever been
13 given until today from Mr. Echols was his four-page report.
14 The only place in his report in which he talks about
15 consequences to Mr. Democker's license is on Page 3 of 4,
16 Paragraph 4. He says: "If Carol Kennedy went back to court
17 armed with the information we have presented, the potential
18 for Mr. Democker to be found guilty of perjury and submitting
19 fraudulent statements to the court would be extremely high.
20 If Mr. Democker were convicted of any of these charges, he
21 would lose his license to sell securities, his Book of
22 Business, and the ability to generate significant sums of
23 income and stock. His lifestyle would significantly change.
24 He stands to lose all that he has."

25 Thus far, Mr. Echols has testified about

1 information --

2 THE COURT: I don't need a summation about
3 what has been testified to. I have been here. What is the
4 objection?

5 MR. SEARS: The objection is that there was a
6 discovery cutoff. In advance of the discovery cutoff, we got
7 this opinion about this matter. Mr. Echols today --

8 THE COURT: What is your objection for this
9 question?

10 MR. SEARS: This question asks him about
11 unstated and as yet unidentified areas where Mr. Democker
12 talked about the fear of losing his license. He's already
13 expressed an opinion about it, but only this opinion.

14 If he can't tie this to his report, I
15 suggest is not properly disclosed and should be excluded.

16 THE COURT: This particular question I find to
17 be not objectionable, and I am going to overrule the
18 objection.

19 MR. BUTNER: Thank you.

20 THE WITNESS: Additionally, I have on Sunday,
21 June the 1st, 2008, from Exhibit No. 42, continued
22 discussions about all of these issues of going back to court,
23 et cetera.

24 This is Steve writing to Carol. "If you
25 wish to drag the four of us back to that courthouse, that

1 will be on you, as is the fourth continuance you forced on us
2 to be turned over, to be a complete and very expensive waste
3 of time for both of us, for which I declined to go after my
4 attorney's fees."

5 There are a number of other e-mails that
6 are not in this stack that also relate to that.

7 MR. SEARS: Your Honor, I believe the question
8 was about his license.

9 THE COURT: Sustained.

10 MR. SEARS: I move to strike that answer.

11 THE COURT: The answer is stricken. The
12 exhibit is already in.

13 MR. SEARS: Thank you, Your Honor.

14 BY MR. BUTNER:

15 Q. Were you aware that Carol Kennedy had discussions
16 with Mr. Democker about the fact that he could lose his
17 license if she went back to court?

18 A. Yes. Carol.

19 Q. And she set forth those items in e-mails to him?

20 A. That's correct.

21 Q. When were those e-mails?

22 A. E-mail is dated March the 5th, 2008.

23 MR. SEARS: May the record reflect that
24 Mr. Echols got that information from his own materials and
25 not from any exhibit?

1 THE COURT: I don't know if the record does
2 reflect that or not.

3 Mr. Echols?

4 MR. SEARS: I watched him look at his
5 notebook, Your Honor.

6 THE WITNESS: The e-mails that are in
7 documents are different in appearance than what I have been
8 looking at. So, when I see an e-mail, I visualize in my mind
9 what it is and I know where it is at. So, I locate it there
10 by date, so I can go to the exhibit and find it here, because
11 it looks different, only in its presentation.

12 BY MR. BUTNER:

13 Q. What is the time of the e-mail that you are
14 talking about?

15 A. Talking about an e-mail from Carol Kennedy to John
16 Casalena on March 5th, 2008.

17 Q. Let me show you what's been marked as Exhibit No.
18 138.

19 MR. SEARS: My exhibit? I haven't offered it
20 yet.

21 MR. BUTNER: I know, but I am thinking you
22 might.

23 MR. SEARS: Perhaps. Maybe the State has
24 another copy of it, Your Honor.

25 THE COURT: If it is marked, it can be used by

1 either side.

2 MR. SEARS: That is fine.

3 THE COURT: The way in which the computers
4 now set them up by number, don't even identify who is
5 offering them.

6 MR. SEARS: That is fine.

7 THE COURT: Once they are marked, they are
8 marked. And, I will add, that they are marked permanently,
9 even for trial purposes.

10 MR. BUTNER: Let me pull one of the e-mails
11 out of Exhibit 138 here.

12 MR. SEARS: Please be careful.

13 MR. BUTNER: It didn't extract it from the
14 Court's. I extracted it from mine. And I ask it be marked
15 separately.

16 MR. SEARS: Thank you, Your Honor.

17 THE COURT: You can do it that way. What
18 number are we on?

19 THE CLERK: 139.

20 THE COURT: Thank you.

21 BY MR. BUTNER:

22 Q. Is this one of the e-mails you were talking about,
23 now marked as Exhibit 139?

24 A. Yes. It's the one I am looking at, exactly.

25 Q. Where did you get your copy of that e-mail?

1 A. That was in Carol's records on her computer.

2 Q. And it's reflective of a conversation by way of
3 e-mail between Carol Kennedy and whom?

4 A. John Casalena.

5 Q. And is mention made of what might happen to
6 Mr. Democker's licensure and ability to deal securities?

7 A. Yes.

8 MR. SEARS: Objection. Relevance. If it is
9 not from Mr. Democker, it can't possibly support one of the
10 aggravators.

11 THE COURT: Sustained.

12 MR. BUTNER: It can possibly support one of
13 the aggravators, Judge. This is something that was an
14 awareness between both parties in this dissolution.

15 THE COURT: It is an awareness by
16 Miss Kennedy. I am not sure that it is an example of an
17 awareness of the defendant.

18 MR. BUTNER: Okay.

19 Q. Mr. Echols, were you aware that Mr. Casalena's
20 reports were provided to Mr. Democker's attorney?

21 A. I was told they were, yes.

22 Q. This being reports that indicated that
23 Mr. Democker was engaged in filing fraudulent income tax
24 returns?

25 MR. SEARS: Objection to the form of the

1 question. Mr. Casalena's report was not admitted in this
2 proceeding. Asking this witness to talk about that report is
3 a request to talk about a matter not in evidence.

4 THE COURT: Sustained.

5 BY MR. BUTNER:

6 Q. Did Mr. Democker send e-mails to Carol Kennedy
7 referencing the fact that he had viewed Mr. Casalena's
8 reports?

9 A. I have seen e-mails that indicates that he has
10 seen and reviewed those reports, but not any specific
11 dialogue about them or the content.

12 MR. SEARS: Foundation as to date, time and
13 specific communication.

14 THE COURT: If you would follow-up with that.

15 BY MR. BUTNER:

16 Q. Can you tell us the date or time of any of these
17 e-mails, Mr. Echols?

18 A. Only the continued discussion about what is in the
19 report. There is continued e-mails back and forth about the
20 report and what is in the report, so obviously, they have
21 seen the report.

22 Q. Could you point to an e-mail that you have, a date
23 indicating that Mr. Democker has seen the report.

24 A. There is a letter from Anna Young's letterhead
25 sent to Mr. Fruge in which a discussion about the Book of

1 Business, which is basically the topic that Mr. Casalena
2 addressed, addressing the Book of Business.

3 Q. How about any e-mails between Mr. Democker and
4 Carol Kennedy concerning Casalena's report or reports?

5 A. I have got some here.

6 Q. Let's back up for just a minute, if you are not
7 able to find such a thing.

8 Referring to Exhibit 135, have you seen
9 this document before?

10 A. Yes, I have.

11 Q. And who provided you that document?

12 A. We got our copy from Carol's record.

13 Q. Carol's record kept in her box, so to speak, of
14 divorce records at the house?

15 A. Correct.

16 Q. They were found after the time of her death as
17 part of the investigation?

18 A. That's correct.

19 Q. And that report was transmitted to you by the
20 Yavapai County Sheriff's Office?

21 A. That's correct.

22 Q. And that report purports to be a report from John
23 Casalena, CPA; is that correct?

24 A. That's correct.

25 Q. Is that the type of document that you customarily

1 rely upon in doing financial reviews?

2 A. We would use the documents in here to further our
3 investigation. Yes, we would use all the information that is
4 in there.

5 Q. And did you, in fact, rely upon that particular
6 document in doing your -- in offering your opinions in this
7 case?

8 A. We used this document to further investigate, past
9 what was in this document to confirm its accuracy, and then
10 we did use the results of that for my report, yes.

11 MR. BUTNER: Judge, I move for the admission
12 of Exhibit 135, having established that foundation.

13 THE COURT: Mr. Sears.

14 MR. SEARS: Your Honor, it is one thing to
15 simply identify the document as being part of the material on
16 which an expert bases an opinion. It is another thing to
17 offer it as a free standing exhibit, without the author of
18 that document available to be confronted and cross-examined
19 about the conclusions.

20 I have no problem with Mr. Echols
21 testifying about what it is he relied upon, because we are
22 grateful to finally learn what he relied upon. But the State
23 wants to propound this exhibit for the truth of the matters
24 asserted therein.

25 We previously objected, and I believe you

1 sustained our objection to this on the grounds that it is the
2 kind of hearsay that would require the live testimony of a
3 witness in a proceeding like this.

4 And, so, I think Mr. Butner is trying --
5 it is a commendable effort on Mr. Butner's part, but I don't
6 think it solves the problem that the exhibit itself creates
7 in a way in which they want to use it, substantively for the
8 matters here.

9 Mr. Echols is here and can be
10 cross-examined. Mr. Casalena is not.

11 THE COURT: We are at the stage, in essence,
12 of probable cause hearing. Mr. Casalena, as I understand it,
13 is still alive and able to be brought in to testify.

14 It seems to me that in terms of what the
15 witness relied upon, but that is subject to being brought out
16 as part of these proceedings, but whether it is subject to
17 being admitted for the truthfulness of what itself stands
18 for, I am not comfortable with that proposition.

19 MR. BUTNER: Judge, I haven't offered it for
20 that purpose. I offered it based upon the foundation
21 established by this witness.

22 THE COURT: Then I will not use it for that
23 purpose. I will go ahead and admit it, but it won't be used
24 for a substantive purpose.

25 MR. BUTNER: Thank you.

1 MR. SEARS: I have one further --

2 THE COURT: 135 is admitted just for the
3 record. Go ahead.

4 MR. SEARS: Thank you, Your Honor.

5 We are aware of several different
6 versions of this report from Mr. Casalena, including one that
7 was marked as a draft that was faxed up the day before the
8 May 28, 2008, trial in this case. I have not looked at this
9 one carefully enough to know which of the various iterations
10 of that report it is.

11 THE COURT: Do you have multiple copies of the
12 same report that you can access? You don't want to make the
13 comparison today.

14 MR. SEARS: Mr. Butner -- now, Mr. Butner
15 hands me -- this has a Bates stamp, which means it was
16 disclosed. It is -- we have a version of this that we
17 received from Anna Young's file that has a fax header on it
18 and the word "draft, not to be used for either court or
19 litigation" on it.

20 THE COURT: So, there may be some other
21 iteration of it, is what you are saying?

22 MR. SEARS: As long as the Court understands
23 that this never became an exhibit, Mr. Casalena was not
24 present at the trial.

25 THE COURT: I understand those facts.

1 MR. SEARS: Would the Court ask Mr. Echols if
2 he has looked at other versions of this report or other
3 reports from Mr. Casalena beyond this one?

4 THE COURT: I have admitted it, but you
5 certainly can follow-up and develop the record further. I
6 have indicated what I will and won't use it for.

7 MR. SEARS: Thank you, Your Honor.

8 BY MR. BUTNER:

9 Q. In fact, you saw several versions of
10 Mr. Casalena's report; is that correct?

11 A. There were four.

12 Q. There was sort of a progression of them?

13 A. Yes, sir.

14 Q. This is basically the final report by
15 Mr. Casalena, referring to Exhibit No. 135?

16 A. That's correct.

17 Q. And Mr. Casalena, what is your understanding as to
18 how he was involved in the Democker/Kennedy divorce?

19 MR. SEARS: Relevance.

20 THE COURT: I have that testimony all about
21 this at the Simpson hearing.

22 MR. BUTNER: That's true, Judge. I would ask
23 you to take judicial notice of that.

24 THE COURT: Mr. Sears.

25 MR. SEARS: No problem. I remember how that

1 came out.

2 THE COURT: I will take judicial notice of the
3 testimony that I received at the Simpson hearing with regard
4 to the Casalena reports.

5 MR. SEARS: Thank you, Your Honor.

6 BY MR. BUTNER:

7 Q. And one of the things from Mr. Casalena, if I
8 understand correctly, is that -- well, let me put it this
9 way. Did you see indications that there was concern by Carol
10 Kennedy that if she proceeded with complaining to the
11 government about Mr. Democker's tax return and the financial
12 affidavits that he had filed with the court, that
13 Mr. Democker would lose his ability to deal in securities?

14 A. I have seen a considerable number of e-mails
15 between Carol Kennedy and Mr. Casalena where that issue is
16 addressed. I don't recall, off the top of my head, whether
17 the issue of he would lose his license was discussed.
18 However, it was a serious allegation that he was making.

19 So, I can't say that I know that he said
20 he would lose his license, but I think that was the tone of
21 what he was saying to Carol.

22 Q. When you say "he," you are talking about the
23 advice that Mr. Casalena was providing to Mr. Fruge and his
24 client, Carol Kennedy?

25 A. That is correct.

1 MR. SEARS: Your Honor, now we are talking
2 about the substance of Mr. Casalena's report after I
3 understood the Court's ruling to simply limit it to the fact
4 that he relied upon it in doing his own independent work.
5 And I re-urge my objections to a discussion of what
6 Mr. Casalena said or meant.

7 THE COURT: In terms of relevancy, I will
8 sustain the objection on that basis.

9 MR. SEARS: Thank you, Your Honor.

10 BY MR. BUTNER:

11 Q. In terms of Mr. Democker's ability to perform his
12 occupation in dealing in securities, was Mr. Democker in
13 danger of losing that ability as a result of things that you
14 have discovered in analyzing these financial documents?

15 MR. SEARS: Foundation to this witness. He
16 testified he only knows what other people tell him.

17 THE COURT: Sustained.

18 MR. BUTNER: If I could have a couple of
19 moments, Judge.

20 THE COURT: Sure.

21 MR. BUTNER: Judge, could we take a brief
22 recess?

23 THE COURT: We are a little early, but I also
24 will remind you, I think I have another matter at four
25 o'clock that may determine where we go from here later.

1 Stand in recess.

2 MR. SEARS: Thank you, Your Honor.

3 (Brief Recess.)

4 THE COURT: Record reflects the presence of
5 the defendant, his counsel, prosecutor.

6 Mr. Echols is still on the stand.

7 DIRECT EXAMINATION RESUMED

8 BY MR. BUTNER:

9 Q. Mr. Echols, in going back to the financial
10 affidavits that were filed by Mr. Democker in the divorce
11 proceedings, you testified earlier about an asset or assets
12 that were left out of those affidavits; is that correct?

13 A. Correct.

14 Q. What was the asset or assets?

15 A. Well, there would be two assets. The asset that
16 would be the other side of the entry from the liability from
17 the employee forgivable loan. The second asset would be the
18 Book of Business.

19 Q. Okay. And you estimated the value of that asset
20 at what?

21 A. I did not estimate the value of that asset. I
22 reviewed the estimation that was done by Mr. Casalena, and
23 found that the parameters that he used to calculate it were
24 within the guidelines.

25 Q. Okay. And is this Book of Business, this is the

1 asset that Mr. Democker was talking about when he said he
2 could take his Book of Business down the street and get a
3 check for a million dollars written for it?

4 MR. SEARS: Objection.

5 THE COURT: Sustained.

6 MR. SEARS: That misstates the testimony.

7 THE COURT: Sustained.

8 MR. SEARS: Thank you.

9 BY MR. BUTNER:

10 Q. This Book of Business that we have been
11 discussing, this is what Mr. Democker brought with him from
12 A.G. Edwards and received compensation for under the terms of
13 the letter of understanding from UBS?

14 MR. SEARS: Misstates the evidence.

15 Mr. Democker brought nothing from A.G. Edwards. There is no
16 evidence to support that. He brought himself.

17 THE COURT: Overruled.

18 THE WITNESS: That's correct.

19 THE COURT: I have heard the testimony,
20 though. It is cumulative and you are repeating yourself.

21 MR. BUTNER: I am getting to a point, Your
22 Honor.

23 Q. Is that correct?

24 A. That's correct.

25 Q. You relied upon Mr. Casalena's estimate as to the

1 value of that?

2 A. Yes. I did not compute my own.

3 Q. And did you also obtain information from
4 Mr. Democker's interview as to value of that?

5 A. There was a reference to it, yes.

6 Q. And so, could you give us the parameters of the
7 range of the value of Mr. Democker's Book of Business?

8 A. I think what the things -- there is three
9 different figures that we can be looking at. The one that
10 was referred to by Mr. Democker when he said he could go down
11 the street and get a million dollars. Secondly, we can look
12 at the UBS letter of understanding that he took in September
13 of 2004, which represents, in essence, the Book of Business.
14 The third one would be Mr. Casalena's estimate.

15 Q. And the UBS -- the amount of the UBS estimate of
16 the Book of Business based upon the letter of understanding?

17 A. Approximately 850,000.

18 Q. And was that -- this Book of Business, was that
19 used as an asset in the divorce in any way by either
20 Mr. Democker or Carol Kennedy?

21 A. It was a subject of arbitration. They continued
22 to discuss whether or not -- Mr. Democker didn't think it
23 existed. Carol and her team thought it did. There was a
24 continued discussion and disagreement over its value and
25 whether it existed.

1 Q. It wasn't present or mentioned in either of
2 Mr. Democker's financial affidavits; is that correct?

3 A. That's correct.

4 Q. Was this Book of Business treated as an asset at
5 the resolution of the dissolution action and appropriations
6 made on the value of it?

7 A. My recollection is that it was assigned to
8 Mr. Democker in the agreement.

9 Q. But there was no value assigned?

10 A. That's correct.

11 Q. So, if Carol Kennedy had taken Mr. Democker back,
12 could she have sought an allocation of monies based upon the
13 value of the Book of Business between 850 and one million
14 dollars?

15 MR. SEARS: This calls for legal conclusion --

16 THE COURT: Sustained.

17 MR. SEARS: -- whether she ever asked for a
18 new trial.

19 Thank you.

20 BY MR. BUTNER:

21 Q. Did you see indications that Carol Kennedy was, in
22 fact, threatening Mr. Democker with taking him back to court
23 in order that she could get that kind of distribution of
24 assets?

25 A. Yes.

1 MR. SEARS: Foundation as to communication,
2 date and time.

3 THE COURT: I think it is cumulative.
4 Sustained on that basis.

5 MR. SEARS: Move to strike his answer.

6 THE COURT: It is stricken.

7 MR. SEARS: Thank you.

8 BY MR. BUTNER:

9 Q. Can you point to an e-mail where Carol Kennedy
10 threatened Mr. Democker with taking him back to court on
11 financial matters in the dissolution?

12 A. Yes. I think we've quoted that a couple of times;
13 haven't we.

14 Q. I think we have.

15 THE COURT: That is why I thought it was
16 cumulative.

17 MR. BUTNER: I understand.

18 MR. SEARS: I thought the question was about
19 the taken back to court about the Book of Business. That is
20 the way I understood the question. That is why I objected.

21 THE COURT: Is that an objection now to the
22 present question?

23 MR. SEARS: Well, I don't know where we are.
24 I have lost track. I am sorry. I know Mr. Echols is looking
25 for something.

1 BY MR. BUTNER:

2 Q. Did you find that e-mail?

3 A. Well, we had two e-mails, did we not, that we are
4 talking about them going back to court. And these e-mails
5 are two and three pages long, where they are continuing to
6 discuss several of the issues.

7 Q. The date of the e-mails, please?

8 A. Pardon?

9 Q. The date of the e-mails, please.

10 A. Sunday, June 1st, 2008.

11 MR. SEARS: Sorry?

12 BY MR. BUTNER:

13 Q. The exhibit number, please?

14 A. Exhibit No. 44, and Exhibit No. 57, dated Tuesday,
15 June 10. We have read both of those.

16 THE COURT: I am showing June 15 on the date
17 of that. Can you check that.

18 THE WITNESS: Yes.

19 THE COURT: Is just from the clerk's summary?

20 THE WITNESS: I see June the 10th.

21 THE COURT: All right.

22 MR. BUTNER: And then at the break, Judge, we
23 reviewed the transcript of the Simpson hearing and managed to
24 find the exhibit number for Mr. Casalena's report, which was
25 Exhibit No. 73, and it is the same report that the State

1 sought to offer in this hearing.

2 THE COURT: Thank you.

3 MR. BUTNER: And it was admitted in the
4 Simpson hearing.

5 Q. And in regard to the Simpson hearing, again, at
6 the break did I show you the testimony of witness Cynthia
7 Wallace testifying at the Simpson hearing from Pages 18, 19
8 and 20?

9 A. Yes.

10 Q. And basically this was in regard to whether Carol
11 Kennedy was going to file an income tax return for the year
12 2007; is that correct?

13 A. That's correct.

14 Q. And had Carol Kennedy filed an income tax return
15 for the year 2007 as of the date of her death on July the 2nd
16 of 2008?

17 A. No.

18 Q. And did you have an understanding as to why she
19 hadn't?

20 A. She was having a conflict over who she would go to
21 ferret out the discrepancies between the information that was
22 sent to her by Steve Democker, and what was going to happen
23 if she filed a return that did not match his return.

24 Q. In fact, did she receive advice from Cynthia
25 Wallace about what would happen if she filed the tax return

1 that had different numbers on it than what Steven Democker
2 had on his?

3 A. Yeah. She had indicated to him that if she filed
4 the numbers based on what she thought was correct, that it
5 would have generated an audit, that she would not have to
6 report Steve at all, but that the Internal Revenue Service
7 would resolve the issue.

8 Q. When you say she would not have to report
9 Mr. Democker, you are talking about not having to report
10 Mr. Democker for filing a fraudulent income tax return?

11 A. That's correct.

12 Q. And Carol Kennedy's numbers, so to speak, that
13 you've mentioned, these are numbers that are significantly
14 lower in terms of the amount of spousal maintenance she
15 received?

16 A. I am not sure I understand that question. Say it
17 differently.

18 Q. Did she get less money from Mr. Democker for
19 spousal maintenance than he claimed on his income tax return,
20 according to her belief?

21 A. Her belief, according to the figure she was going
22 to use -- no. Let's back up. She was not going to use a
23 figure of alimony at all.

24 Q. What was she planning on doing?

25 A. She was planning on filing a return, married

1 filing separately, and filing it according to the tax law.

2 Q. Okay. Is it your opinion that Mr. Democker filed
3 an income tax return in 2007, based upon the one that Carol
4 Kennedy was in possession of when she consulted with Cynthia
5 Wallace, that was not in accordance with the tax laws, as you
6 put it?

7 A. That's correct. It is not in compliance with the
8 law.

9 Q. And explain to us, if you would, how that tax
10 return is not in compliance with the law?

11 A. In a community property state, individuals who
12 file, who are married, have two choices to file a tax return.
13 As a married filing jointly, or as married filing separately.
14 If they choose to file married filing separately, they have
15 to take one half of each spouses income, combine it together,
16 and put on their individual returns, as well as sharing the
17 withholding associated with each of their salaries. That was
18 not done in this particular case.

19 Q. What was done in this case, to your understanding?

20 A. In this case, Mr. Democker claimed all of the
21 income that he received from UBS as his sole and separate
22 income with all of the withholding.

23 Q. And what was the result of that?

24 A. He received a \$41,000 refund.

25 Q. \$41,000 refund?

1 A. Yes.

2 Q. And he received that in its entirety?

3 A. That's correct.

4 Q. It was not distributed to Carol Kennedy?

5 A. No.

6 Q. And then as a result of the QDRO that went in
7 place in this case, there was distribution made; is that
8 correct?

9 A. That's correct.

10 Q. How was that distribution made?

11 A. Well, under the QDRO order, it was given to her,
12 and she had the responsibility of paying the tax consequences
13 on it, and they, by agreement, had decided how those funds
14 were going to be separated or used.

15 Q. And did Carol Kennedy have sufficient funds to pay
16 the taxes on the distribution of the QDRO?

17 A. No.

18 Q. And was she seeking to get those monies from
19 Steven Democker?

20 A. She was seeking a resolution of some kind. She
21 wasn't sure what that resolution would be, but she knew she
22 needed help.

23 Q. Was this part of her threats to take him back to
24 court?

25 A. That's correct.

1 Q. Ultimately, did you find out who filed the income
2 tax return on behalf of Carol Kennedy for the year 2007?

3 A. It is my understanding Doug Raider filed the
4 return in March of 2009.

5 Q. And that was, in essence, a return that mirrored
6 the income tax return of Steven Democker that he had
7 previously filed for 2007?

8 A. With respect to the alimony, yes.

9 Q. Therefore, avoiding an audit and further
10 repercussions?

11 MR. SEARS: Objection. Speculation. Beyond
12 the scope of this witness' knowledge.

13 THE COURT: Sustained.

14 MR. BUTNER: No further questions of this
15 witness at this time.

16 THE COURT: Cross.

17 MR. SEARS: Thank you.

18 CROSS-EXAMINATION

19 BY MR. SEARS:

20 Q. Let's talk about the most recent topic, if we
21 could, please, Mr. Echols. Let's talk about the 2007 tax
22 return issue.

23 Have you read all of Cynthia Wallace's
24 testimony from January 15, 2009?

25 A. No.

1 Q. Have you read any of Cynthia Wallace's testimony?

2 A. Yes.

3 Q. Which portions have you read?

4 A. The portion that Mr. Butner referred to when he
5 questioned me.

6 MR. SEARS: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes.

9 BY MR. SEARS:

10 Q. Let me show you a transcript of her complete
11 testimony from the Simpson proceeding in this case. And I
12 call your attention and Mr. Butner's attention to Page 34 of
13 the transcript, beginning with Line 11.

14 I ask you to read silently to yourself,
15 remainder of Line 11, Page 34, and continue, if you would,
16 please, over to Line 9 on Page 35.

17 A. Okay. Okay.

18 Q. Now, I understood you to say in response from some
19 questions from Mr. Butner a few moments ago, that your
20 understanding of Cynthia Wallace's advice to Carol Kennedy
21 was rather than reporting either Mr. Democker or Doug Raider
22 to anybody, that she should simply prepare a tax return,
23 taking the position that she advocated, and that the IRS
24 would see the competing tax returns, investigate the matter,
25 and determine which position was correct. That is her

1 advice; isn't it?

2 A. I believe that is her advice, yes.

3 Q. Now, the portion that I read you was asking about
4 that advice. And I am in the transcript that you saw, I am
5 the person asking the questions and obviously Miss Wallace is
6 giving the answers.

7 And she says on Line 21, I ask: "That's
8 not fraud; is it?" And she says, Line 22, "not necessarily."
9 I say, "it is just an aggressive position on a tax return by
10 a certified public accountant; correct?" She says, "mostly."
11 I ask on Page 35, Line 1, "you didn't see any reason to tell
12 Carol to run down to the attorney's office or Internal
13 Revenue Service and report either Steve or his accountant or
14 both of them committing civil or criminal tax fraud at that
15 point?" Answer: "Well, no, I did not. I never recommend
16 anyone contacting IRS to report fraud on someone else.
17 Normally, IRS looks at the person first, if they even pay any
18 attention to it. It is not just something you do."

19 Now, this was advice given to Carol
20 Kennedy just shortly before her death. Is that your
21 understanding?

22 A. That was close proximity of her death.

23 Q. Within a week, is that your understanding?

24 A. I think that's true.

25 Q. Now, with regard to the position taken by

1 Mr. Democker on his 2007 tax return, I thought I heard you
2 say that in a community property state, a couple who files
3 married filing separately must claim a portion of the other
4 spouse's income, and the deduction from that income on their
5 own return. Is that what you said?

6 A. That's correct.

7 Q. Now, you understand that in 2007, a petition for
8 dissolution of marriage between Steve Democker and Carol
9 Kennedy was filed; correct?

10 A. Yes.

11 Q. You, of course, understand that under Arizona law
12 the marital community ends on the date of service of that
13 divorce petition?

14 A. That is not correct.

15 Q. Are you an attorney?

16 A. I have done enough tax returns and filled out
17 enough returns like that to know that is not correct.

18 MR. BUTNER: Judge, I would like to note an
19 objection. It is a little bit belated. But I think
20 Mr. Sears misspoke. The time of the filing of the divorce
21 petition was in 2008, not seven.

22 MR. SEARS: No, it was 2007. They were
23 divorced in 2008. It went on for over 14 months.

24 THE COURT: That is my recollection of events.

25 MR. BUTNER: Thank you.

1 MR. SEARS: Mr. Butner had the documents here
2 earlier in the day.

3 Q. Let me see if I can understand your position. You
4 are saying here under oath, Mr. Echols, that you believe
5 under Arizona law the marital community does not end at the
6 time of the service of the divorce petition?

7 A. With respect to the filing of tax returns, that is
8 absolutely correct.

9 Q. Do you have some specific authority, cited
10 authority for that position?

11 A. Arizona revised statutes, Internal Revenue Code.
12 The only exception to that policy under the Internal Revenue
13 Code is Code Section 66. There are three exceptions, Code
14 Section 66 A, B and C. Each one of those exceptions grants a
15 different way of handling that, but Mr. Democker didn't
16 qualify under any one of those three exceptions.

17 Q. Let's discuss the idea of claiming on a person's
18 tax return deductions to which they are not entitled. In
19 this particular case, since you said you looked at every
20 e-mail, you certainly saw the e-mails from Steve Democker to
21 Carol Kennedy, and from Doug Raider directly to Carol
22 Kennedy, in which they announced their intention to file
23 separately and to claim a particular amount as deductible
24 under the spousal maintenance deduction. You saw that
25 exchange of e-mails; didn't you?

1 A. Yes, I did.

2 Q. So, this fraudulent return that you are talking
3 about began by Mr. Democker and his certified public
4 accountant announcing to Carol Kennedy what they were about
5 to do; correct?

6 A. I didn't see any announcements by Mr. Raider to
7 Carol. I saw announcements by Mr. Democker to Carol as to
8 what he was going to do.

9 Q. Did you look at Carol Kennedy's computer?

10 A. Yes.

11 Q. Did you not see the e-mail from Mr. Raider to
12 Carol Kennedy that begins Hi, Carol, in which he describes
13 that he had been in communication with Steve and he intended
14 to file the return?

15 MR. BUTNER: Objection, Judge. He is dealing
16 with an e-mail that isn't in evidence. Maybe he is going to
17 place it in evidence. So, there is a complete lack of
18 foundation, and he is citing facts not in evidence.

19 THE COURT: In general cross-examination. You
20 can answer the question and see where it goes. Overruled.

21 MR. SEARS: Thank you

22 Q. Did you see that e-mail?

23 A. I saw those, as well as other e-mails where
24 Mr. Raider sent information to Carol that was supplied to him
25 by Mr. Democker as a courtesy for her to review. Correct.

1 Q. There was apparently some negotiation between
2 Carol and Steve that was passed on to Doug Raider, adjusting
3 the numbers, where Carol would say these numbers are not
4 correct. And adjustments were actually made by Mr. Democker
5 and his accountant; weren't they?

6 A. There were some adjustments made, yes.

7 Q. There were three separate instances in the e-mails
8 that you say you looked at, where Mr. Democker offered to
9 file a joint return with Carol; isn't that true?

10 A. That's correct.

11 Q. And his position was that he had had Mr. Raider
12 run out pro forma returns showing what the refunds would be
13 if they filed jointly, or if they filed separately and he
14 claimed the deduction. That is what he was saying to Carol;
15 correct?

16 A. That's correct.

17 Q. He believed basically the information that he got
18 from his accountant was that if he filed a separate return,
19 his refund would be greater than if he filed a joint return
20 with Carol; correct?

21 A. That is what he said he got from his accountant,
22 yes.

23 Q. And Mr. Democker then proposed to file jointly if
24 Carol would simply reimburse him the difference between the
25 larger and smaller refund. And his justification in that

1 e-mail was that it was still cheaper for Carol to do that,
2 because if he filed separately, she would owe more tax;
3 correct?

4 A. That was what he told Carol, yes.

5 Q. And Carol rejected that; correct?

6 A. Correct.

7 Q. Steve offered again one more time after she
8 rejected that specific proposal to file a joint return if she
9 would simply refund him the shortfall in what he believed his
10 refunds would be; correct?

11 A. He did make that offer again, yes.

12 Q. And then, he finally after three attempts to
13 negotiate with her, and all the back and forth, filed his
14 2007 return, married filing separate, claiming what he
15 believed to be the proper amount for the spousal maintenance
16 deduction; correct?

17 A. That is what he believed, yes.

18 Q. Now, in your report which was given to us at the
19 end of September, you characterized this exchange of
20 information in your final analysis, looking at Page 3 of 4.
21 Do you have your report there?

22 A. Which report?

23 Q. The report that you prepared dated September 25th,
24 2009, to Detective John McDormett.

25 A. Which page?

1 Q. Looking at Page 3 of 4.

2 A. I have it.

3 Q. In Paragraph 2 of your final analysis, when you
4 were talking about the preparation of 2007 income tax return
5 that you believe were fraudulent, are we talking about
6 Mr. Democker's claim of the deduction for spousal maintenance
7 paid in 2007?

8 A. Let me quickly read it, please.

9 Ask me the question again, please.

10 Q. Is the discussion in Paragraph 2 on Page 3 of 4
11 regarding your belief that the documents are fraudulent and
12 represent perjury with respect to the 2007 income tax, is
13 that statement based upon your belief that he was not
14 entitled to claim the spousal maintenance deduction for 2007?

15 A. It was based on partly that, because the spousal
16 deduction was based on what the court had determined to be
17 spousal maintenance payments. And what the court had ordered
18 and what he used as a deduction were not equal. And
19 secondly, the preparation of the tax return in and of itself
20 was incorrect.

21 Q. For the reasons that you previously stated?

22 A. Yes, sir.

23 Q. Now, on Page 2 of 4 of this report, you have a
24 paragraph called "2007 tax returns"?

25 A. Yes.

1 Q. And you assert in there that Ms. Wallace on
2 several -- some information was presented to Mr. Democker
3 from Ms. Wallace. Tell me what you base that assertion on?

4 A. There were a number of e-mails in which Carol had
5 represented to Mr. Democker that Miss Wallace had told him
6 that his approach to the tax return was incorrect, that they
7 had to share the income half and half. That there was an
8 issue of the proper way to prepare the return, and therefore,
9 she wanted Mr. Democker to get an extension, so that they
10 could get the true answer as to how the return was to be
11 prepared.

12 Q. Your belief is that there is an e-mail that has
13 Ms. Wallace's name on it communicated to Mr. Democker?

14 A. I believe there is an e-mail stating that is where
15 she got the advice, yes. I don't know that it is an e-mail
16 from Ms. Wallace to Carol, but there are e-mails that
17 indicate that that was the advice that she received from
18 Ms. Wallace.

19 Q. In fact, the e-mails from Carol to Steve about the
20 tax advice she got, specifically failed to mention the names
21 of any of the people from whom she got tax advice, to the
22 point where Mr. Democker said, in effect, you want me to
23 accept advice from people whose names you won't even share
24 with me. Do you remember that exchange?

25 A. Yes.

1 Q. Can you point to an e-mail that was sent by Carol
2 to Steve that has Ms. Wallace's name in it?

3 A. Can I point to one here, no. Can I find one, yes.

4 Q. But not here today?

5 A. As you told me, there was over 2000 pages of
6 e-mails. I can't put my hands on it right now, but I have
7 read it.

8 Q. Did you really look at every e-mail in this case?

9 A. No, sir, I didn't, but my office did.

10 Q. How did they get it? Did they get copies of the
11 hard drives?

12 A. Yes, sir.

13 Q. Somebody in your office went through every single
14 e-mail on which computers?

15 A. A number of people went through the e-mails.

16 Q. Which computers?

17 A. There was Carol's computer. Steve's desk top
18 computer. His lap top computer. And there may have been
19 another computer. Off the top of my head, I can't remember
20 how many computers there were.

21 Q. Someone got all of the e-mails and you used
22 forensic software to open and investigate those e-mails?

23 A. That's correct.

24 Q. Which ones did you look at?

25 A. I looked at the ones that in my office we

1 determined applied to the issues that we thought were issues.

2 Q. Do you disagree with the idea that Ms. Wallace
3 advanced in her testimony that one way to deal with this
4 question is simply to file the competing tax return and let
5 the IRS figure it out?

6 A. Let me restate that and see if I understand your
7 question.

8 Do I disagree that the comment was made
9 that it was just an aggressive position that the accountant
10 was taking, and do I agree with that?

11 Q. No. That was my comment.

12 Do you agree with Miss Wallace's advice
13 to Carol, which was: Don't report anybody any place. Simply
14 file a different tax return. We will help you prepare that.
15 We will get a tax lawyer to help with that. And let the IRS
16 sort it out. Somebody will win, somebody will lose.
17 Somebody will pay tax penalties and interest, and somebody
18 will prevail. That was her advice; wasn't it?

19 A. That was her advice.

20 Q. There is nothing wrong with that advice; is there?

21 A. That is not the approach I would have taken, but
22 that was her advice.

23 Q. There is nothing wrong with her advice; is there?

24 A. That is not what I would do, and I don't agree
25 with that advice, but that was her advice.

1 Q. Cynthia Wallace's advice would have produced an
2 outcome for Carol Kennedy; wouldn't it?

3 A. It might have.

4 Q. That would have been the outcome. Somebody would
5 have won and somebody would have lost as between Steve and
6 Carol?

7 A. There was a potential of that, yes.

8 Q. And meanwhile, whatever fear that Carol had that
9 reporting Steve might effectively kill the golden goose would
10 be resolved. If Steve would lose his licenses, as you claim
11 you were told, and Carol Kennedy was going to be dependent on
12 him for the next eight years for spousal maintenance, Cynthia
13 Wallace's advice sounds pretty good; doesn't it?

14 A. It does not sound good to me. My background is in
15 accounting. I would not have done it that way. I would have
16 done it differently.

17 Q. Reporting Mr. Democker to the Internal Revenue
18 Service or to who knows who, you thought was a more
19 appropriate course of action for Carol?

20 A. No. I didn't say that.

21 Q. In this particular case, one of the allegations,
22 Mr. Echols, is that Mr. Democker killed Carol to prevent her
23 from reporting him to some agency. Do you understand that?

24 A. Yes, I do.

25 Q. The last person, apparently, she got tax advice

1 from told her not to do that; is that right?

2 A. I understand that.

3 Q. Do you know of any other person that she received
4 tax advice from after Cynthia Wallace before she died that
5 told her to do something different?

6 A. I think Mr. Casalena was a little more aggressive
7 in the advice that he gave to her.

8 Q. Do you have any indication that Mr. Casalena gave
9 her advice between June 25th and July 2nd that was different
10 and more aggressive than the advice Cynthia Wallace gave?

11 A. Here today I couldn't tell you that. I know there
12 is a number of e-mails that we could look at. But here today
13 I don't have those in front of me.

14 Q. Mr. Casalena was also interested in getting more
15 money from Carol; wasn't he? Larger retainer?

16 A. I don't know that.

17 Q. You saw those e-mails; didn't you?

18 A. I saw that she owed him money, yes.

19 Q. He was encouraging her to find a way to pay him;
20 wasn't he?

21 A. He was encouraging her to do what he thought was
22 best for her, is the way I interpreted it.

23 Q. In fact, the last communication to her was about
24 his bill; wasn't it?

25 A. I think it was.

1 Q. Now, in respect to the 2007 tax return, are you
2 suggesting that there is in existence someplace, an
3 unequivocal threat from Carol Kennedy communicated to
4 Mr. Democker that she intended to turn him over to the
5 Internal Revenue Service or to report him to some
6 governmental agency as a result of this return?

7 A. Let me answer that by saying I believe that Carol
8 certainly was desirous of and was planning on doing something
9 with respect to the tax return. How she was going about
10 doing that, I don't know, but I know she wanted to.

11 Q. Do you understand that it would seem logical that
12 if Mr. Democker decided he needed to kill Carol Kennedy to
13 end that threat, that the threat be communicated to him?

14 A. Yes. I would think that would be true.

15 Q. And I ask you again, do you have any information
16 that can point us to an unequivocal threat from Carol Kennedy
17 to Steve Democker that was not later retracted or altered or
18 changed, which she said she was going to report him to some
19 agency?

20 A. I think we have talked about this a couple of
21 times about going back to court, have we not?

22 Q. Going back to court. Now, the going back to court
23 e-mails are in the time period between the entry of the
24 divorce decree and her death; correct?

25 A. Say that again.

1 Q. The e-mails that you made reference to, Exhibits
2 44 and 57, were both dated in the time period after the
3 settlement of the divorce on May 28, 2008, and her death on
4 July 2nd of that year; correct?

5 A. Yes, sir.

6 Q. And that would make sense, because prior to May
7 28, you couldn't really go back to court because you hadn't
8 been to court yet; right?

9 A. That's correct.

10 Q. Now, in those e-mails, she doesn't say she is
11 going to take him back to court to re-value the Book of
12 Business; does she?

13 A. In a sentence that says I am going to take him
14 back to court to re-value the Book of Business, no.

15 Q. So the answer is no?

16 A. Well, no. It is not really no. She had talked to
17 him on several occasions about trying --

18 Q. Did she --

19 MR. BUTNER: Please, allow him to finish the
20 answer.

21 BY MR. SEARS:

22 Q. Answer my question.

23 A. I can't answer it except to say no, that's not
24 true.

25 Q. Exhibit 44 and 57, would you locate them.

1 A. Correct. I have got them.

2 Q. Would you show me where in either of those
3 exhibits, Carol discusses taking Mr. Democker back to court
4 to re-value the Book of Business?

5 A. They are not there.

6 Q. Can you show me where in Exhibits 44 and 57 there
7 is a threat from Carol to take Mr. Democker back to court
8 over the 2007 income tax return?

9 A. In those two exhibits, no.

10 Q. In those two exhibits, she is talking about going
11 back to court over one particular issue dealing with the
12 excess amount, over \$180,000, to be divided from the 401-K
13 that was transferred to her through a qualified domestic
14 relations order, and other debts that she thought she was
15 owed to be set off against it. That is all they are talking
16 about; isn't it?

17 A. I don't believe so, no.

18 Q. Let's take a look at those exhibits. Could I have
19 44, please.

20 Exhibit -- this is Exhibit 44. And you
21 say this exhibit contains a threat from Carol to take Steve
22 back to court to you?

23 A. No. I suggested in that exhibit that it covered
24 more than just what you were asking for.

25 Q. Does it contain somewhere in here a threat to take

1 Steve back to court?

2 A. Not in that exhibit, no.

3 Q. Let's look at Exhibit 57. Do you have 57 here?

4 A. 57.

5 Q. Is this Post-It your note?

6 A. Yes.

7 Q. Thank you.

8 Okay. On Page 3 of Exhibit 57, in red
9 there is a statement I think you testified about, where Carol
10 says, "if we have to go back to court over this detail, so be
11 it. It is the principle. Right is right."

12 What detail?

13 A. She is talking about when the divorce decree was
14 handled, there was an argument over whether or not -- how
15 much money was going to be paid on the Chase credit card. At
16 the time, Mr. Democker was about \$5,000 in arrears on that
17 card. And in the divorce decree, it was decided that part of
18 the QDRO funds would be used to pay off the Chase credit
19 card. Her feeling was that it was to pay off the credit card
20 net of the \$5,000 that was in arrears.

21 They were having an argument about the
22 Chase, et cetera. They were having an argument about her not
23 properly being represented by her attorney. She felt like
24 she was cheated. They were having an argument about the
25 filing of the tax return. All those things were issues.

1 Q. My question was limited to that one statement.

2 A. You asked me what was the issue. I am trying to
3 explain the issue.

4 Q. The sentence is, "if we have to go back to court
5 over this detail, so be it", period.

6 A. Those are the details.

7 Q. It is not "those" details. It is "this" detail.
8 That is what it says in there; doesn't it? This detail.

9 A. I thought she said over these details. Over this
10 detail. This detail, whether you call it "this" or "these,"
11 that is what she is talking about. She has been talking
12 about it in 10 or 15 of these e-mails, the same thing. We
13 are going back over all of these issues.

14 Q. The dispute over the Chase credit card comes down
15 to this: In the divorce case which was settled in this
16 building, one floor below us, money from this 401-K that was
17 transferred to her was specifically ear marked, it is right
18 in the divorce decree, to pay the balance on the Chase bill;
19 correct?

20 A. Correct.

21 Q. Her position was Steve was behind in the payments.
22 He should catch them up and then she should pay the net
23 balance; correct?

24 A. That's correct.

25 Q. Steve's position was the decree says pay the

1 balance. The balance is whatever it was. That is what you
2 should pay. That was his position; correct?

3 A. That's correct.

4 Q. They are arguing over \$5,000?

5 A. On that issue, yes.

6 Q. Now, the issue about her being badly represented
7 by Mr. Fruge isn't Mr. Democker's problem; is it?

8 A. Probably not.

9 Q. Okay. And I imagine that in all the years, in the
10 35 years you have been an accountant, you have been around a
11 lot of divorce cases; right?

12 A. Yes, I have.

13 Q. And wouldn't you say it is somewhat common for one
14 or both parties in a divorce case to wind up feeling badly
15 served by the judge and their lawyer and all the other people
16 connected with the case. Nobody comes out feeling great
17 about the process; right?

18 A. That's correct.

19 Q. And, in fact, Carol complained about everybody in
20 the case; didn't she?

21 A. Correct.

22 Q. That is not surprising; is it?

23 A. No. That is what I read.

24 Q. And people in divorce cases, particularly divorce
25 cases that last as long as this one, more than a year, say

1 lots of things to each other; correct?

2 A. That's correct.

3 Q. These people apparently were pretty verbal;
4 weren't they?

5 A. Very.

6 Q. And they were prolific e-mail writers; correct?

7 A. Correct.

8 Q. But their e-mails go up and down; don't they?

9 Sometimes the e-mails are pretty angry and accusatory, and
10 sometimes the e-mails go in a completely different direction;
11 don't they?

12 A. We see an occasional e-mail where they try to do
13 some type of reconciliation. But the lion's share of those
14 e-mails are very adversarial.

15 Q. Did you ever see an e-mail the day after the
16 divorce -- if I could have Exhibit 138, please. Is that up
17 here?

18 Let me tell you, Mr. Echols, this is an
19 exhibit that we put together, Exhibit 138. It hasn't been
20 admitted yet. If you would take a look at the very last
21 page. Have you ever seen that e-mail before?

22 A. Yes, sir, I have.

23 Q. This is an e-mail, 11:32 in the morning the day
24 after the divorce.

25 A. Correct.

1 Q. It is from Carol to Steve; correct?

2 A. Correct.

3 Q. In the middle Carol talks about, thanks him for
4 the tone of his note.

5 MR. BUTNER: Judge, objection.

6 THE COURT: Sustained. I presume you are
7 objecting to reading --

8 MR. BUTNER: An exhibit not in evidence.

9 THE COURT: -- from an exhibit not in
10 evidence?

11 MR. SEARS: Let's go ahead and see if we can't
12 lay a foundation for the entire exhibit, so we can talk about
13 this last page. You have an entire exhibit there. Take a
14 second and look at all of the e-mails there. There are 20 of
15 them.

16 Q. Tell me if you are familiar with all of them.

17 A. Yes. I didn't read all these e-mails, but I have
18 seen them all.

19 Q. Let me tell you what we were trying to do. You
20 can look at the first two pages here, and you can see we
21 called this tax related e-mails from Carol's computer. What
22 we were trying to do is in response to something that was
23 attributed to you.

24 In a pleading that the State filed
25 earlier in this case, they suggested that you had advised

1 them that you believed that Carol made a threat on March 1st,
2 2009, to Steve in what was described as a note to turning him
3 over to the IRS. And we weren't aware of any note, so we
4 thought perhaps it would be an e-mail. We had, of course,
5 access to Carol's computer, and we went back and found what
6 we think you may have been talking about.

7 Then we went back in time before that to
8 the first place we could find, which was on February 8 of
9 2008, where we thought there was any mention of an e-mail of
10 the 2007 income return. And what we tried to do is put all
11 of the e-mails in chronological sequence, ending with an
12 e-mail that we were just talking about until the objection
13 came, on May 29, the day after the divorce.

14 Can you see what we have done?

15 A. Yes.

16 Q. And you said you have seen these?

17 A. Yes, I have.

18 Q. And would you agree that they are all in
19 chronological order as to date?

20 A. I think they are, yes, without checking each one.

21 MR. SEARS: I'd move Exhibit 138, Your Honor.

22 MR. BUTNER: No objection.

23 THE COURT: 138 is admitted.

24 MR. SEARS: Thank you.

25 Q. Now, having done that, let's take a look, if we

1 could, at the last page. For everybody's ease, what we have
2 done is we have put our own little numbers up in the right
3 hand corner to correspond to this index. The last one
4 happens to be item number 20, which is the e-mail on May 29,
5 2008, 11:32 in the morning.

6 Are you with me?

7 A. Yes, sir, I am.

8 Q. Now, in the third full paragraph of that
9 salutation after Steve, Carol says, "thanks for the tone of
10 your note. I am grateful to hear about the unexpected
11 windfall that is the result of you doing so well so far in
12 2008. That explains what you and Anna were talking about" --
13 sorry. Anna. I have been dragged down that path, Your
14 Honor. -- "were talking about, and why you wanted to get to
15 keep anything in the 401-K that was over 180-K. And, yes, it
16 is, of course, a Godsend, especially since you made off with
17 48-K of marital assets from your IRA, 24-K, which was legally
18 mine, that would have resolved my tax bill. I will use this
19 windfall to pay the IRS."

20 This is Carol the day after the divorce;
21 right? Are you with me?

22 A. Yes.

23 Q. And she is saying she is going to use this
24 windfall to pay the IRS. Let's talk about that windfall.

25 You said you that studied the divorce

1 records. You appear to have some familiarity, as you told
2 us, with Arizona divorce law. It is true, isn't it, that on
3 the day that this case was set for trial, May 28, 2008, one
4 floor below here, in fact, there was no trial. That is your
5 understanding; correct?

6 A. That is my understanding.

7 Q. That instead, as sometimes is the case,
8 particularly in divorce cases, two parties and their lawyers
9 got together and hammered out a divorce settlement that
10 included a number of handwritten changes and additions to a
11 typewritten divorce decree; correct?

12 A. That is my understanding, yes.

13 Q. And then Carol and Steve and Anna Young and Robert
14 Fruge all signed that agreement; correct?

15 A. I don't know that to be a fact, but I think it is
16 correct. I wasn't there and I haven't seen it, so I don't
17 know.

18 Q. You haven't seen the divorce decree?

19 A. I haven't seen them sitting together with them
20 signing it.

21 Q. Have you seen the divorce decree that bears their
22 signature?

23 A. I think I have a copy of it.

24 Q. Do you have any reason to doubt those are their
25 signatures?

1 A. No. I have no reason to doubt what you are
2 saying.

3 Q. I'm glad, because that is an exhibit proposed by
4 the State.

5 A. I just haven't seen it.

6 Q. And the idea, then, was after they had this
7 agreement worked out, they presented it to Judge Mackey,
8 Superior Court Judge. And Judge Mackey then signed it and
9 made it an order of the court; correct?

10 A. I believe that is correct.

11 Q. Now, prior, you have seen all of the
12 communications, and you have knowledge of the mediation
13 sessions, the two mediation sessions that the parties went
14 through in September and in April in this case, in which they
15 had essentially considered this IRA to have a value of
16 \$180,000. There was a lot of negotiation that assumed that
17 the IRA was worth \$180,000. Do you remember all that back
18 and forth about that?

19 A. Yes.

20 Q. It turns out on the day of the trial, May 28,
21 2008, Mr. Democker had his office check, since this was a UBS
22 IRA, the Godsend that Carol is talking about is that the IRA
23 had increased in value from \$180,000 to \$197,000; correct?

24 A. I believe that's correct.

25 Q. When the negotiations took place in the hallway,

1 the understanding was that \$180,000 of that \$197,000 IRA
2 would be transferred to Carol by qualified domestic relations
3 order. That is Part 1; correct?

4 A. That's correct.

5 Q. From that she would pay the taxes that would be
6 due on it; correct?

7 A. That's correct.

8 Q. From the net amount, she was obligated to pay a
9 number of community debts, and they are all broken out in
10 this divorce decree; right?

11 A. That's correct.

12 Q. And, in fact, there is later correspondence that
13 you talked about where Steve is saying, I don't see any proof
14 that you paid the Visa bill. And she says, yeah, I have.
15 You will see the proof. I paid \$20,000 today; correct?

16 A. Correct.

17 Q. Now, they had to do something about the extra
18 \$17,000; correct?

19 A. On that particular day, there was \$17,000.

20 Q. Right.

21 A. That amount changed.

22 Q. Well, things do change.

23 A. Yeah, they do.

24 Q. And the agreement on May 28, 2008, was that Carol
25 and Steve would split the amount over \$180,000, which on that

1 day would have been about \$8,500 plus or minus to each one of
2 them; correct?

3 A. It was 17,000. How it was going to be split, I am
4 not sure.

5 Q. Let's look at the divorce decree.

6 MR. SEARS: Your Honor, rather than waste more
7 of the Court's time looking for this, this was provided to me
8 by the State, and included in these divorce documents in
9 their divorce case is a copy of the decree that the State
10 provided.

11 May I show that to the witness?

12 THE COURT: You may.

13 MR. BUTNER: I don't know if it is marked as
14 an exhibit.

15 MR. SEARS: I will take it apart, confuse the
16 record, and have it marked as an exhibit.

17 THE COURT: I don't know that it will confuse
18 the record, Mr. Sears.

19 MR. BUTNER: I don't think it will either,
20 Mr. Sears. I don't think we ended up marking one, either.

21 MR. SEARS: My mistake. I thought what they
22 gave me was what they had marked.

23 THE COURT: I can't tell from looking at
24 anything that I have that there is already a copy that was
25 marked.

1 MR. SEARS: Meanwhile, since I took this out
2 of a piece of paper, would the State stipulate?

3 MR. BUTNER: To what?

4 MR. SEARS: This divorce decree.

5 MR. BUTNER: Sure.

6 THE COURT: Do you want to look at them first?

7 MR. BUTNER: Yeah, that would be a good idea.

8 I am sure we are getting a copy of what we were going to
9 mark.

10 MR. SEARS: That is the QDRO. Did you mark
11 them as one exhibit?

12 THE CLERK: Do you want them as one exhibit?

13 MR. SEARS: I just want the divorce decree.

14 Can we have that marked? Unfortunately, the precise part I
15 want to ask Mr. Echols about appears to be cut off in the
16 State's copy.

17 Your Honor, this is now Exhibit 140. I
18 think by stipulation that may be admitted.

19 MR. BUTNER: That is the divorce decree?

20 MR. SEARS: Yes.

21 MR. BUTNER: No objection.

22 THE COURT: Exhibit 140 is admitted.

23 BY MR. SEARS:

24 Q. Let me show you Exhibit 140 here. It is a little
25 hard to read because it is cut off here, but this is the

1 second page. And down at the bottom there is a handwritten
2 series of notations. Can you read that?

3 A. I am familiar with that notation, yes.

4 Q. Can you read that into the record. Read it for
5 the Judge, please, the handwritten part.

6 A. Okay.

7 Q. It points off or stops.

8 A. "This provision is predicated on both parties
9 belief that the 401-K has a value of at least \$180,000. Each
10 wants and believes that the balance of the B of A is less --

11 Q. That's not talking about the 401-K; is it?

12 A. Balance of the B of A is -- where do you want to
13 go from there?

14 Q. Well, I think we go right off the edge of the
15 page; don't we?

16 A. Why don't we say that the agreement was that if,
17 in fact, there was a something greater than \$180,000 when
18 distribution was made, they were going to share that.

19 Q. It says, you can barely read it, "the parties will
20 split the excess."

21 A. Yes.

22 Q. Now, what happened, though, was although the QDRO
23 was done pretty quickly, there was a delay in getting the
24 401-K liquidated and transferred to Carol's checking account;
25 correct?

1 A. I believe that is correct, yes.

2 Q. And sadly, by the time it landed in Carol's
3 account, the value had dropped?

4 A. That's correct.

5 Q. The value was no longer \$197,000. It was about
6 \$186,000; correct?

7 A. I believe that's correct.

8 Q. So, here comes another dispute. We can see it
9 coming; can't we?

10 A. Absolutely.

11 Q. Steve wanted half of \$17,000, because he said
12 that's what the value was on the day that we agreed. She
13 said, no, no, no. The difference is \$6,000, roughly. And,
14 oh, by the way, you still haven't paid the following account.
15 So, not only do I not owe you \$3,000, you actually owe me
16 some money. That is the position she got into.

17 A. Well, there was another issue in there. The other
18 issue was that that amount that they were to share, if she
19 were left to pay the taxes on it, all of her share of that
20 50-percent would go to taxes, and she would receive nothing.
21 And he was the only one to receive his half. So she also
22 made the statement that the amount that was over the \$180,000
23 would be split after the taxes were paid on it.

24 Q. That was her position?

25 A. That was her position, correct.

1 Q. It doesn't say that.

2 A. That was not his position.

3 Q. It doesn't say that in the decree. It doesn't say
4 anything in the decree one way or the other about it.

5 A. The evidence that you submitted here earlier and
6 the documents that she prepared sending the answer to Steve
7 clearly pointed that out.

8 Q. The divorce decree doesn't saying anything about
9 that?

10 A. That's correct. Did not address the issue of
11 taxes.

12 Q. Carol took a position and Steve took a position?

13 A. Correct.

14 Q. And they weren't agreeing?

15 A. That's correct.

16 Q. That matter was still under discussion the day
17 that Carol died?

18 A. That is one of these issues.

19 Q. This issue?

20 A. Yes, this issue.

21 Q. We have got \$5,000, plus or minus on a Chase
22 account. And we have got Steve's position that actually --
23 and this would be consistent with the text messages he was
24 sending her, which I guess you have seen on the day she died?

25 A. Yes.

1 Q. Where he said, we each owe the other a pile of
2 money. And his position was the same. You owe me about
3 \$8,500 for the excess on that 401-K, and I owe you \$6,000.
4 He was not disputing that; correct?

5 A. No. He was -- that was what he presented to her,
6 yes.

7 Q. He was ordered to pay it and he said, I owe you
8 that. On the day she dies, he tells her he owes her that;
9 correct?

10 A. Correct.

11 Q. His idea was we should exchange checks. Not do
12 some sort of a setoff. We should exchange checks. You
13 should write me a check for \$8,500, and I should write you a
14 check for \$6,000, just to keep things straight. That was his
15 position; correct?

16 A. That was what he sent her, yes.

17 Q. That was the last communication from Steve to
18 Carol on that topic. That was his proposal; right? Let's
19 get together and exchange checks.

20 A. On that specific topic, yes.

21 Q. Now, they were still quibbling back and forth,
22 though, in the little more than a month between the end of
23 the divorce and the time of her death, about a number of
24 these different clean-up issues from the divorce; correct?

25 A. Correct.

1 Q. But in that same period of time, by comparison,
2 Carol is not threatening Steve about the 2007 tax return.
3 She is getting tax advice, whether she likes it or not, we
4 will never know, because she is dead within a few days. And
5 she is not complaining about the Book of Business and taking
6 it back the court. She is not complaining about his
7 financial statement. She is not complaining about any other
8 aspect of the divorce. It is these clean-up issues.

9 (Phone ringing.)

10 Sorry, Your Honor. I will forfeit it to
11 Mr. King, as long as he pays the balance on the account.

12 The sum total of the negotiations and the
13 discussion between the party, which never got resolved
14 because Carol died, in that period of time between May 28 and
15 July 2nd of last year, they were talking about Chase bills,
16 some utility bills. When I say "they," Carol and Steve were
17 discussing that. And then the final issue being this
18 question of how to calculate the division of the excess,
19 whether you take a lower figure or the higher figure. That
20 is what they were talking about; wasn't it?

21 A. That is part of what they were talking about, yes.
22 They were still talking about the issue of the taxes, et
23 cetera. And I think you told me that Carol had never told
24 Mr. Democker that she intended to take him to court over the
25 tax return?

1 Q. No, no. I never said that. You misunderstood me.

2 What I was looking for was a clear and
3 unequivocal threat after the divorce, after May 28, to Steve
4 that she was going to turn him over to the IRS or report him
5 to some administrative agency over anything. Over anything.

6 A. I think there are some e-mails that would show
7 that, yeah.

8 Q. Let's look at Exhibit 20 in sequence here.

9 MR. SEARS: Judge, I see my friend
10 Mr. Phillips, and my friend, Mr. Wolfinger, in the back of
11 the courtroom, and I am mindful of why they are here.

12 THE COURT: Are you ready to go yet on your
13 case, Mr. Phillips?

14 MR. PHILLIPS: My client and I are here, and
15 we can go forward.

16 THE COURT: Are we going forward with the plea
17 agreement?

18 MR. PHILLIPS: Yes, sir, we are.

19 THE COURT: Since this does resolve my case
20 next week, and I am going to reserve, or potentially will
21 assume that the plea goes through, and that may have an
22 affect on where we go with the remainder of this hearing, let
23 me take a break in this hearing and see where we go from here
24 with Mr. Phillips and his client.

25 MR. SEARS: Thank you.

1 Would you like us to clear out here?

2 THE COURT: I suppose, if you give him some
3 area to work in.

4 (A break was taken in this case.)

5 THE COURT: This is resuming in State versus
6 Steven Democker. CR 2008-1339.

7 Mr. Echols is still on the stand subject
8 to cross-examination. However, it is a quarter to 5:00. The
9 case I had set for next week just pled out. The interruption
10 that we took in this case was to do that. That frees up,
11 obviously, continuing the hearing next week.

12 The lawyers, off record, advised me and
13 Mr. Echols advised me of their availability next week,
14 commencing Tuesday afternoon. That is November 3rd at 1:30.
15 And so we will recess at this point until next Tuesday at
16 1:30.

17 And for your record and calendar, I have
18 some other matters on Wednesday between 8:00 and 9:30, and
19 between 4:00 and 5:00. So, basically, we would also have
20 Wednesday available on the 4th of November from 9:30 to noon
21 and then 1:15 or 1:30 through 4:00. Although I will give my
22 staff some breaks in there, too, and you some breaks.

23 Let's recess for the time being. If
24 there are any exhibits up here, if you could return those or
25 leave them there. We will get them returned to the clerk by

1 the bailiff.

2 There was a question by the clerk about
3 what she should do with regard to how we marked Exhibits 136
4 and 137. My notes reflect that the front only page is
5 admitted of those multi-page things. I will tell you that
6 for purposes of this hearing, I will only consider and only
7 review the first pages of those documents, but I will leave
8 them all together.

9 MR. BUTNER: That's fine, Judge. Or I can
10 withdraw the remainder if it creates a problem. It really
11 doesn't make much difference.

12 THE COURT: I don't think it makes all that
13 much difference. I will assure you that I will only review
14 the first page and take that into consideration.

15 Is that acceptable, Mr. Sears?

16 MR. SEARS: Yes, Your Honor.

17 THE COURT: So, if the clerk -- if at least
18 the clerk's notes could show only the first page is admitted
19 and the rest are not, I think I can ignore the rest.

20 Anything else that you think you need to
21 make a record on before we leave?

22 MR. SEARS: No, Your Honor.

23 MR. BUTNER: No, Your Honor.

24 THE COURT: Stand in recess until Tuesday
25 afternoon.

1 MR. SEARS: Your Honor, there is one other
2 matter.

3 THE COURT: Take that back.

4 MR. SEARS: You previously agreed to provide
5 us with an expedited transcript of Dr. Keen's testimony. In
6 view of the break in the testimony here and the need for our
7 potential witness, I would like to see if we can get the
8 remainder of the testimony this week. Dr. Keen yesterday and
9 the testimony today. I don't know when we are going to have
10 that by, but if we could get it, it would be very important.

11 THE COURT: I don't know whether that's able
12 to be done, honestly, given that it is five minutes to 5:00.

13 MR. SEARS: We can wait until 5:00.

14 THE COURT: On what day?

15 THE REPORTER: Are you expecting to have it on
16 Tuesday?

17 MR. SEARS: That would be fine, thank you.

18 THE COURT: I am hearing that probably you
19 won't have it by Tuesday. Is there part of it that is more
20 critical to your carrying on with the hearing than other?

21 MR. SEARS: The testimony of Mr. Echols thus
22 far would be first importance. The testimony -- the
23 remainder of the testimony of Dr. Keen would be secondary.
24 But what Mr. Echols said thus far would be most important,
25 please.

1 THE COURT: We will have Tuesday, the majority
2 of Tuesday morning available.

3 THE REPORTER: I will have it by the time he
4 shows up on Tuesday.

5 THE COURT: So ordered.

6 Now stand in recess.

7 (Whereupon, these proceedings were concluded.)

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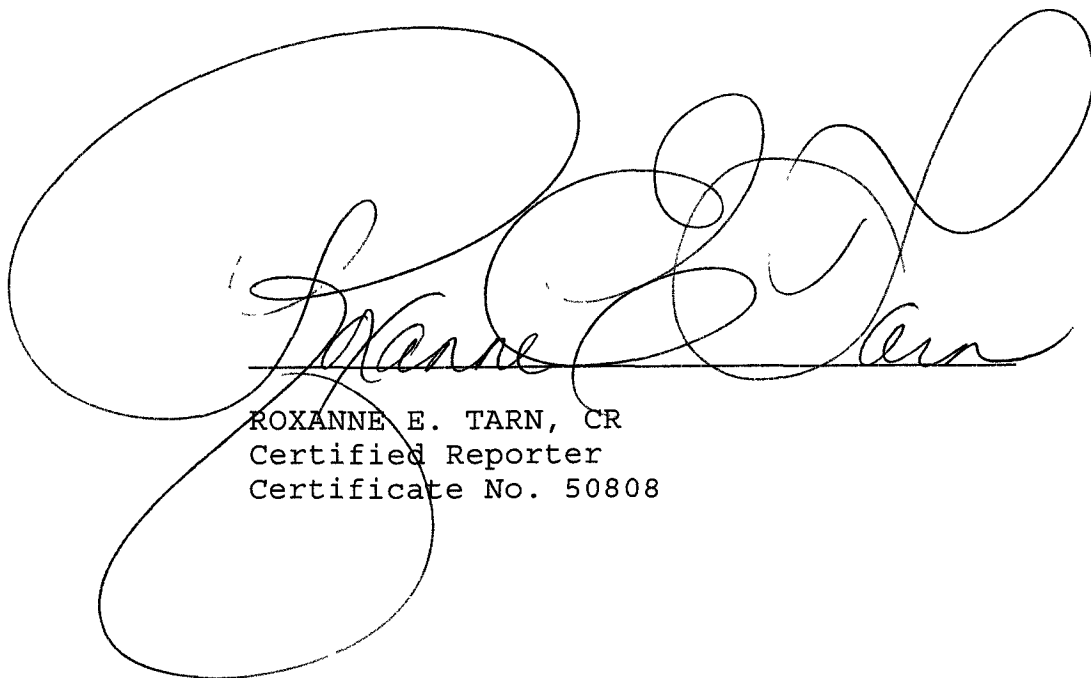
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 188 constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

SIGNED and dated this 3rd day of November,
2009.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808